OPINION NO. 1304

Syllabus:

1. A debt cancellation contract providing that the debt will be automatically cancelled in the event of the borrower's death is a contract substantially amounting to insurance within the meaning of Section 3905.42, Revised Code. (Opinion No. 589, Opinions of the Attorney General for 1945, Opinion No. 1722, Opinions of the Attorney General for 1928 and Opinion No. 3104, Opinions of the Attorney General for 1938, approved and followed).

2. A national bank may not lawfully enter into a debt cancellation contract in Ohio without complying with the insurance laws of Ohio.

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To: William R. Morris, Director of Department of Insurance, Columbus, Ohio

By: William B. Saxbe, Attorney General, August 19, 1964

I have before me your request for my opinion which reads as follows:

> "Is a national bank located and operating in the State of Ohio and which enters into a debt cancellation contract providing that the

debt will be automatically cancelled in the event of the borrower's death subject to the Insurance Laws of the State of Ohio?

"We may assume that the bank in such case makes additional charges to borrowers for the purpose of creating a fund out of which the balance due on a loan would be paid in the event the borrower died."

Your request letter raises two issues for my determination:

1. Does a debt cancellation contract constitute a contract of insurance or a contract substantially amounting to insurance within the purview of Section 3905.42, Revised Code?

2. If issue one is resolved in the affirmative, does any law or policy exempt national banks from compliance with the insurance laws of Ohio?

In reference to obligations cancelable on death, I Couch on Insurance 2d, page 41, Section 1:14, states as follows:

"In several instances contracts providing that the obligation thereof shall be cancelled in case of death or other extrinsic event have been held to constitute contracts of insurance. Thus an undertaking on the part of one selling merchandise on the installment plan to cancel the debt in case the buyer dies before the installments are all paid constitutes insurance, as does an agreement to cancel the balance due on a loan in the event of the death or disability of the borrower * * *" (Citing Missouri, Kan., and Tex. Trust Co., v. Krumseig, 77 F 32, affd. on other grounds 172 U. S. 351, 43 L. Ed. 474, 19 S. Ct. 179. United Sec. Life Ins. and Trust Co., v. Bond, 16 App. D.C. 579. Attorney General v. C. E. Osgood Co., 249 Mass. 473, 35 A.L.R. 1037, and note, 144 N.E. 371. State v. Beardsley, 88 Minn. 20, 92 NW 472. Ware v. Heath 237 SW 2d 362.)

In previous opinions the Attorney General of Ohio has consistently held debt cancellation contracts, such as those you describe, to be contracts "substantially amounting to insurance" within the meaning of Section 665 General Code. Section 665 General Code (presently 3905.42, Revised Code) provides as follows:

"No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid there-

in, or engage in the business of guaranteeing against liability, loss, or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with."

In Opinion No. 589, Opinions of the Attorney General for 1945, one of my predecessors in office held inter alia that a contract quite similar to the transaction described in your request was a contract "substantially amounting to insurance." Paragraph one of the syllabus in that opinion reads as follows:

"Where a building and loan association provides in its note secured by a mortgage on real estate for the payment thereof in monthly installments and also provides that 'in the event one of the undersigned dies leaving a husband or wife surviving who is also one of the undersigned' and for the fulfillment of certain other conditions that 'the interest remaining unpaid on this obligation for said six months period will be cancelled upon prompt payment of the first monthly installment due thereafter', such note is a contract substantially amounting to insurance and the building and loan association in entering into such contracts is engaged in the transaction of the business of insurance."

This opinion is consistent with two prior Attorney General opinions where debt cancellation agreements were held to be transactions "substantially amounting to insurance" within the meaning of Section 665 General Code (3905.42, Revised Code). The first opinion, Opinion No. 1722, Opinions of the Attorney General for 1928, page 424, holds as follows:

"Where a furniture company in Ohio sells furniture on the installment plan and, at the time of the sale, makes an agreement with the purchaser that, in the event the purchaser dies before the furniture is completely paid for, the company will cancel the debt for such furniture and give the purchaser's estate a receipt in full for the balance of the account remaining unpaid, the transaction is a contract 'substantially amounting to insurance' within the meaning of Section 665, General Code."

In Opinion No. 3104, Opinions of the Attorney General for 1938, page 1908, it was concluded:

"Where a cemetery association sells lots for burial purposes upon the installment basis, the purchaser to pay a specific amount each week so long as he shall live, and in any event not more than twenty years, provided, however, if the purchaser should not survive the twenty-year period the association shall be required to execute a deed to his legal representative

> without further payment at the time of his death; the transaction is a contract 'substantially amounting to insurance' within the meaning of Section 665, General Code."

In light of these opinions, which are hereby affirmed and followed, I am compelled to hold, and you are hereby advised that a debt cancellation contract providing that the debt will be automatically cancelled in the event of the borrower's death is a contract substantially amounting to insurance within the meaning of Section 3905.42, Revised Code.

Section 3905.42, Revised Code, supra, prohibits unauthorized companies from engaging in the business of insurance in this state. This prohibition extends to companies, corporations, or associations, whether organized in this state or elsewhere. Even though national banks are organized under the laws of the United States, (See Section 21, Title 12, U. S. Code), the language of Section 3905.42, Revised Code, seems broad enough to encompass them. It follows therefore, that if national banks are exempt from the provisions of Section 3905.42, Revised Code, such exemption must be by virtue of Federal law.

A study of the relevant Federal Statutes and cases discloses no such exemption. On the contrary, the Federal Statutes and cases compel me to hold that national banks, insofar as they engage in the business of insurance, are subject to state regulation. Section 1011, Title 15, U. S. Code, provides as follows:

> "The Congress hereby declares that the continued regulation and taxation by the several states of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states."

Further, Section 1012, Title 15, U. S. Code, provides in part:

> "(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
>
> "(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * unless such act specifically relates to the business of insurance * * *" (Emphasis added)

There are no provisions in the National Bank Act (Section 21, et seq., Title 12, U. S. Code) which supersede state insurance law or any provisions that "specifically relate to

the business of insurance", with one exception, not here relevant.

The Supreme Court has consistently held that national banks are subject to state imposed regulation except where such regulation infringes upon the national banking laws, or unduly burdens such banks in the performance of the banking functions for which they were created. See Anderson Nat'l. Bank v. Luckett, 321 U. S. 233, 88 L. Ed. 1425; First Nat'l. Bank of Missouri v. Missouri, 263, U. S. 640, 68 L. Ed. 486.

In light of the foregoing, it is my opinion and you are advised as follows:

1. A debt cancellation contract providing that the debt will be automatically cancelled in the event of the borrower's death is a contract substantially amounting to insurance within the meaning of Section 3905.42, Revised Code. (Opinion No. 589, Opinions of the Attorney General for 1945, Opinion No. 1722, Opinions of the Attorney General for 1928 and Opinion No. 3104, Opinions of the Attorney General for 1938, approved and followed).

2. A national bank may not lawfully enter into a debt cancellation contract in Ohio without complying with the insurance laws of Ohio.