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INSURANCE POLICY, GROUP LIFE—GRACE PERIOD—PROVISIONS AS TO THIRTY-ONE DAYS FOR PAYMENT OF PREMIUM, LIABILITY OF EMPLOYER, DISCONTINUANCE OF POLICY AND STIPULATIONS QUOTED IN SYLLABUS DO NOT MEET REQUIREMENTS OF SECTION 9420 PARAGRAPH 2 G. C.

SYLLABUS:

A provision in a group life insurance policy for a grace period as follows: "If the Employer has not previously given written notice to the Company that this Policy is to be discontinued, a grace period of thirty-one days, without interest charge, shall be granted to the Employer for the payment of every premium, after the first, during which period this Policy shall continue in force. If any premium be not paid within the days of grace, this Policy shall thereupon be discontinued, but the Employer shall, nevertheless, be liable to the Company for the payment of all premiums then unpaid, together with the premiums for the days of grace. If, however, written notice is given by the Employer to the Company, during the grace period, that the Policy is to be discontinued, this Policy shall then be discontinued on the date of receipt by the Company of such written notice, but the Employer shall, nevertheless, be liable to the Company for the payment of all premiums then unpaid, together with a pro rata premium for such portion of the grace period as this Policy continued in force" does not meet the requirements of provision (2) of Section 9420, General Code, of Ohio.

Columbus, Ohio, March 30, 1945

Hon. Walter Dressel, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In conformity with Section 9423 of the General Code of Ohio, a form of policy for the writing of group life insurance has been submitted to this office for approval. Among other provisions set forth in said form of policy is the following:

GRACE PERIOD

'If the employer has not previously given written notice to the Company that this Policy is to be discontinued, a grace period of thirty-one days, without interest charge, shall be granted to the

Employer for the payment of every premium, after the first, during which period this Policy shall continue in force.

If any premium be not paid within the days of grace, this Policy shall thereupon be discontinued, but the Employer shall, nevertheless, be liable to the Company for the payment of all premiums then unpaid, together with the premiums for the days of grace. If, however, written notice is given by the Employer to the Company, during the grace period, that the Policy is to be discontinued, this Policy shall then be discontinued on the date of receipt by the Company of such written notice, but the Employer shall, nevertheless, be liable to the Company for the payment of all premiums then unpaid, together with a pro rata premium for such portion of the grace period as this Policy continued in force.'

We would appreciate receiving your opinion as to whether the above provision meets the requirements of paragraph (2) of Section 9420 of the General Code of Ohio."

Section 9423, General Code of Ohio, provides as follows:

"No policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, until the form of the same has been filed with the superintendent of insurance; and after the superintendent of insurance shall have notified any company of his disapproval of any form it shall be unlawful for such company to issue any policy in the form so disapproved. The superintendent's action shall be subject to review by any court of competent jurisdiction."

It is to be noted that the above quoted section requires the filing with the Superintendent of Insurance of Ohio a form of each life insurance policy issued or delivered in this state, and further provides that in the event that the Superintendent of Insurance disapproves such a form, after notice of such disapproval, it shall be unlawful to issue such a policy in that form. It would seem clear that it is the duty of the Superintendent of Insurance to disapprove any such form which fails to meet the requirements prescribed by the statutes of Ohio.

Sections 9412 to 9417, General Code of Ohio, inclusive, prescribe forms of policies which may be employed for various types of life insurance issued in Ohio. The type of policy here under consideration is not of standard form prescribed in any of the foregoing mentioned sections. However, Section 9420, General Code, provides in part as follows:

"No policy of life insurance in form other than as provided in sections 9412 to 9417, both inclusive, shall be issued or delivered in this state or be issued by a life insurance company organized under the laws of this state unless the same shall contain the following provisions: * * *

(2) A provision for a grace of one month for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which provision may contain a stipulation that if the insured shall die during the month of grace the overdue premium will be deducted in any settlement under the policy."

It would seem that provision (2) of the above quoted section makes mandatory a provision in the policy for a grace period of at least one month, and that such a grace period is effective irrespective of whether the policy expires by time cancellation or mutual agreement between the employer and the insuring company.

In the case of *Spencer v. Cleveland Athletic Assn.*, 32 N. P. (n. s.) 369, it was held that the period of grace provided by statute can not be eliminated by contract stipulation or by subsequent contract with the employer in the case of group employment insurance.

In the case of *Hinkler v. Equitable Life Assurance Society*, 61 Ohio App., page 140, it was held that where a group insurer and the employer, without the consent of the employe or beneficiary, agreed to cancel the master policies, and the employer paid the last month's premium on such policies, and the employe died within the succeeding grace period, the policies remained in force during the period for which the premium had been paid, including the grace period, and the beneficiary is entitled to recover the full amount provided therein, less the amount of premium apportionable to the carriage of the insurance during the grace period.

The first paragraph of the grace period, as set out in your letter, provides:

"If the Employer has not previously given written notice to the Company that this Policy is to be discontinued, a grace period of thirty-one days * * * shall be granted to the Employer * * *."

This provision would infer that if the Employer gives written notice to the company of discontinuance of the policy, then there would be no grace period. This, of course, would be directly contrary to the requirements of the grace period under Section 9420, General Code.

The second paragraph of the grace period, as set forth in your letter, says:

“* * * If, however, written notice is given by the Employer to the Company, during the grace period, that the Policy is to be discontinued, this Policy shall then be discontinued on the date of receipt by the Company of such written notice,
* * *”

This, also, is in violation of provision (2) of Section 9420, General Code, as it provides for a lesser grace period in the event of discontinuance of the policy during the grace period than is provided by the statute.

I am therefore of the opinion that a form of policy for the writing of group life insurance containing the “grace period” previously quoted in your letter does not meet the requirements of provision (2) of Section 9420, General Code of Ohio.

Respectfully,

HUGH S. JENKINS

Attorney General