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LIFE INSURANCE COMPANY—PLAN OFFERED WHEREBY MORTGAGE LOAN WILL BE MADE ONLY ON CONDITION BORROWER OBTAIN AN EQUIVALENT AMOUNT OF LIFE INSURANCE FROM COMPANY TO BE ASSIGNED AS COLLATERAL SECURITY FOR THE LOAN—PLAN VIOLATES PROVISIONS OF SECTION 9404 G. C.—STATUTE PROHIBITS ANY LIFE INSURANCE COMPANY FROM GIVING OR OFFERING TO GIVE THE LOAN OF ANY MONEY DIRECTLY OR INDIRECTLY AS INDUCEMENT FOR INSURANCE—OPINION 3671, O. A. G., 1941, PAGE 261, REVERSED IN PART.

SYLLABUS:

A plan offered by a life insurance company, whereby a mortgage loan will be made only on condition that the borrower obtain an equivalent amount of life insurance from the company to be assigned as collateral security for the loan, violates the provisions of Section 9404, General Code, prohibiting any life insurance company from giving or offering to give, as an inducement for insurance, the loan of any money, directly or indirectly. (Reversing in part Opinion No. 3671, 1941 Opinions of the Attorney General, page 261.)

Columbus, Ohio, September 26, 1950

Hon. Walter A. Robinson, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

> "In 1941 your predecessor then in office, in Opinion 3671, gave his opinion that the so-called 'Assured Home Ownership Plan' of the Equitable Life Assurance Society of the United States was not in violation of Section 9403 or 9404 of the General Code of Ohio.
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> "Since that date, among other developments, the Attorney General of West Virginia, under date of June 10, 1950, gave his opinion to the Insurance Commissioner of West Virginia that the plan was in violation of the statute of West Virginia which prohibits rebates in the sale of insurance.
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> "In view of these developments we would appreciate it if you would review the 1941 opinion of the Attorney General of Ohio numbered 3671 and let us have your opinion as to whether the plan is in violation of Section 9403 or 9404 of the General Code."

In essence, you request that I reconsider an opinion of a former Attorney General, reported in 1941 Opinions of the Attorney General at page 261, Opinion No. 3671, in which it was held that the Assured Home Ownership Plan of the Equitable Life Assurance Society did not violate Sections 9403 or 9404 of the General Code of Ohio. The then Attorney General first gave consideration to the several documents used in connection with the Plan and found that they were not inconsistent with the laws of Ohio. It is clear the only part of the opinion which you request I review is that pertaining to the applicability of the following provision of Section 9404, General Code:

> "* * * nor shall any company doing business in this state, nor any employe, agent, officer, or representative thereof, give or offer to give, or enter into any separate agreement, promising to secure, as an inducement or consideration for insurance, the loan of any money, either directly or indirectly, or any contract for services."

With respect to this aspect of the opinion, it is pertinent to point out that the Plan in question required that at the time of making an application for a mortgage loan from the Equitable Life Assurance Society, the borrower was also required to apply to the insurance company for life insur-

ance in the same amount, the policy to be assigned as collateral security for the loan. The question then was, did the offer of the loan constitute "an inducement" for the life insurance, in contravention of Section 9404, General Code? The Attorney General reasoned, at page 265, "the loan, if made, is not an inducement to insurance but rather that the insurance is an inducement to the loan," and concluded therefrom that the Plan did not violate said section.

The opinion of the Attorney General of West Virginia, to which you refer, was rendered on June 10, 1950, at the request of the Insurance Commissioner of West Virginia. The West Virginia statute in question, in pertinent part, is substantially the same as the Ohio law, quoted above. In arriving at the conclusion that the plan violates West Virginia law, the Attorney General points out, citing authority, that the inducement for a contract is that which influences the act, and the benefits or advantages which the promisor is to receive from the contract is the inducement for making it. The West Virginia Attorney General reasoned from these principles, as follows:

> "The thing that influences the prospective borrower to purchase the insurance is the obtaining of the loan, and the loan is the benefit or advantage which the borrower is to receive if he buys the insurance in the plan you set forth. Therefore, under the above authorities, the loan would be the inducement for the purchase of the insurance.
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> "We realize that some attorneys general and insurance officials of other states have held that such a plan does not violate their statutes prohibiting discrimination by insurance companies. However, where that has been done to our knowledge, their statutes, while similar to ours in most respects, do not include the last quoted section of our statute which refers directly to loans. (The Ohio statute does include such a provision.) We cannot say, of course, what the intent of our Legislature was in incorporating that section into our statute, but there is every reason to believe that that body intended to prohibit the very practice under consideration; especially in view of the fact that this portion of the statute states that no offer of a loan as an inducement to insurance shall be made 'directly or indirectly.'
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> "This view is strengthened by the fact that the insurance company in this case will not accept other life insurance the prospective borrower might have with this company or other companies, which means that the borrower must necessarily purchase a new policy of insurance from this very insurance company in order to obtain a loan. * * *" (Parenthetical matter added.)

Later on in the West Virginia opinion, the following persuasive thoughts are added to buttress the conclusion reached that the loan constitutes the inducement for the insurance:

> "The primary business of the insurance company is to sell insurance, and the making of loans is an incidental part of its business. So we have the company and its agents on the one hand desiring to sell insurance and a prospective borrower on the other hand whose primary objective is to borrow money. When the company or its agent says that a loan will not be made unless the prospective borrower purchases a policy of insurance, that the policy must be purchased from that very company and no other, and that any insurance the prospective borrower then has will not be acceptable, can it be said that the loan is not made as an inducement to insurance, either directly or indirectly. It is also to be noted that those companies not selling insurance engaged in the business of lending money do not usually require such life insurance as additional collateral.
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> "While it is not illegal for a lender of money to require life insurance as collateral to secure a loan as a general rule, such practice can become unlawful by virtue of the above statute when an insurance company requires a person who desires to borrow money from it to purchase a new policy of insurance from such company as a prerequisite to the granting of the loan."

I agree with the conclusions expressed above by the West Virginia Attorney General. My opinion in this respect is strengthened by the fact that the only authority which the Ohio Attorney General recites to support his conclusion is reference to the general rule that since Section 9404, General Code, provides penalties for violation of its provisions, a strict construction is to be accorded the statute as stated at page 265 of the opinion. This ignores completely the proposition followed by the Supreme Court of Ohio that statutes designed to regulate the business of insurance are remedial in nature and must be liberally construed to effect their purpose. The rule was stated as follows in State ex rel. v. Conn, 115 O. S. 607, in the fourth branch of the syllabus:

> "The business of insurance is impressed with a public use, and statutes designed to regulate such business and to prevent abuses in the conduct thereof are remedial in their nature and must be liberally construed to effect the purposes to be served and to prevent and correct evils growing out of the conduct of such business."

I am reasonably confident that the situation, where a potential borrower is compelled to purchase life insurance from a lender as a condition

of a loan, falls within the evils which the legislature intended to correct by the enactment of the provision in Section 9404, General Code, quoted above. Additional basis for reversal of the 1941 opinion may be found in the public policy of this state with respect to compelling the purchase of insurance from a particular insurance company or agent as evidenced by a recent enactment of the Ohio legislature, Section 9589-5, General Code, effective October 12, 1949, prohibiting such practice in connection with the sale or financing the purchase of real or personal property, or the lending of money upon the security of a mortgage thereon.

Therefore, I am of the opinion that a Plan offered by a life insurance company, whereby a mortgage loan will be made only on condition that the borrower obtain an equivalent amount of life insurance from the company to be assigned as collateral security for the loan, violates the provisions of Section 9404, General Code, prohibiting any life insurance company from giving or offering to give, as an inducement for insurance, the loan of any money, directly or indirectly. (Reversing in part Opinion No. 3671, 1941 Opinions of the Attorney General, page 261.)

Respectfully,

HERBERT S. DUFFY,
Attorney General.