

Even if we considered for the purposes of this discussion that the credit granted under the outlined circumstances may be termed a loan as used in section 6346-1, supra, it is apparent that it is not made on "plain, endorsed or guaranteed notes, due-bills, or otherwise", for the purchaser is only required to be a satisfactory risk for limited credit and obliged to sign a contract acknowledging receipt of a coupon book and agreeing therein to the amount of the cash payment and the subsequent installment payments. Each of these contracts, except that shown under your second plan, contains reference to the inclusion of a carrying charge. The statement in your inquiry shows that even under Plan 2 a carrying charge is made. None of these contracts could be classified as plain promissory notes, nor do they fall within any of the other classifications of section 6346-1. Furthermore, there is no chattel mortgage or pledged chattels involved and no loan of any nature is required upon the salary or earnings of the purchaser. Unless one or more of these conditions are present, or the purchaser is required to furnish guarantee or security in connection with such transactions, there is no requirement that merchants using coupon books as a part of their credit plans be licensed to make loans and charge interest thereon, as provided in sections 6346-1, et seq., General Code.

It therefore seems evident, and it is my opinion, that the issuance of coupon credit books by merchants to their customers for the purpose of facilitating limited credit and the making of a carrying charge in excess of eight per cent. per annum does not constitute a violation of section 6346-1, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1191.

LIFE INSURANCE—CHURCH MAY INSURE LIVES OF SUBSCRIBERS TO ITS "DEBT RETIREMENT FUND" IN AMOUNT OF SUBSCRIPTION—POLICY PAYABLE TO DESIGNATED BENEFICIARY AFTER REMAINDER ON SUBSCRIPTION PAID—NO VIOLATION OF SECTION 9404, G. C.

SYLLABUS:

Where a church establishes a special fund known as the "Debt Retirement Fund" under the control and management of trustees, to which the members of the church subscribe in writing to pay a stipulated amount, and where as part of the plan such subscriber to the Debt Retirement Fund applies for insurance on his life payable to the trustees of the Debt Retirement Fund who are to pay the premiums on such life insurance

policy and where the trustees of the Debt Retirement Fund agree to pay to a person designated by the subscriber the amount of such insurance policy less any indebtedness to the Debt Retirement Fund on account of the subscription by such subscriber, there is no violation thereby of the provisions of Section 9404, General Code.

COLUMBUS, OHIO, September 15, 1939.

HON. JOHN A. LLOYD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

"A foreign insurance company licensed to do business in this state desires to write insurance on the lives of the contributors to a certain church refinancing plan. Having some doubt as to the legality of the insurance feature of the plan, I desire your opinion thereon.

The church desires to provide for the discharge of its present indebtedness and to this end proposes to establish a special fund known as the 'Debt Retirement Fund,' to be administered by three trustees. A money raising campaign is to be conducted among the church members through a campaign organization. The subscription, 'Exhibit A,' attached hereto, creates an obligation to pay into the 'Debt Retirement Fund' a stipulated amount. As part of the plan a policy of life insurance is taken out on the life of the subscriber in the amount of his subscription. It is proposed that a licensed agent of the insurance company secure the application for this insurance, the form of which is attached hereto, marked 'Exhibit B.' The form of policy proposed to be issued, a 35 Year Endowment Contract, is attached hereto, marked 'Exhibit C.'

The church is to pay the premiums on the insurance into the 'Debt Retirement Fund,' the trustees, in turn, paying the insurance company. If the subscriber keeps up his payments and the church continues to pay the premiums, the subscriber's beneficiary will, at his death, receive the face amount of his subscription by virtue of the insurance. You will note from 'Exhibit A' that insurance is definitely part of the refinancing plan and that the subscription creates an 'obligation' on the part of the subscriber. This is further borne out by the Trust Agreement, copy of which, for your information, is attached hereto, marked 'Exhibit D.'

Section 9404, General Code, provides that no person shall 'give or receive, sell or purchase, or offer to give or receive, sell or purchase, as inducements to insurance or in connection therewith, any stocks, bonds or other obligations or securities of any

insurance company or other corporation, association, partnership or individual, or any dividends or profits to accrue thereon, or any paid employment or contract for services of any kind, or anything of value * * *.'

The precise question upon which I desire your opinion is whether the subscription creates an 'obligation' 'in connection therewith'; that is, in connection with the sale of insurance."

Section 9404, General Code, provides in part as follows:

"* * * * * * * * * * * * * * *"

No life insurance company doing business in this state, or any officer, agent, employee, or representative thereof, nor any other person, shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, nor shall any person, co-partnership or corporation knowingly receive as such inducement to insurance any rebate of premium payable on the policy or any special favor or advantage in the dividends or other benefits to accrue thereon, or any special advantage in the date of a policy or date of the issue thereof; or any valuable consideration or inducement whatsoever; or give or receive, sell or purchase, or offer to give or receive, sell or purchase, as inducements to insurance or in connection therewith, any stocks, bonds or other obligations or securities of any insurance company or other corporation, association, partnership or individual, or any dividends or profits to accrue thereon, or any paid employment or contract for services of any kind, or anything of value; nor shall any company doing business in this state, nor any employee, 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.

* * * * * * * * * * * * * * *"

Any company or any agent or other person who violates any of the provisions of this section shall, upon conviction, be fined a sum not exceeding five hundred dollars for each offense and, in the case of a natural person, be imprisoned in the county jail for a period not exceeding thirty days, or both, at the discretion of the court, and shall pay the costs of prosecution."

This section had its origin in an act found in 89 O. L., page 220, an examination of which reveals that its purpose was to forbid special favor or discrimination directly or indirectly by insurance companies or their representatives as to assureds. This act has been from time to time

amended by the General Assembly but in each instance the evident and obvious purpose of the legislature remained the same, i. e., to prevent any discrimination between persons of the same class and equal expectation of life. As is very often the case, the General Assembly did not make the original enactment broad enough to include every possible situation which could arise; and the ingenuity of man was able to prepare and perfect schemes and plans which violated the spirit of the enactment then in force but not its letter. It therefore became necessary for the General Assembly to amend the section on several occasions in order to meet the new situations as they arose.

The plan which you outlined in your letter and which is evidenced by the exhibits which you enclose certainly is not opposed to the purpose of the various enactments of the legislature and is not one of the evils which it was trying to suppress. There is no question of special favor or rebating or any other discrimination between persons of the same class and equal expectation of life. The only problem is whether the plan in question creates an obligation in connection with insurance within the meaning of the statute.

The meaning of the expression "in connection therewith" as used in the section is not entirely clear. In the interpretation of a statute it is necessary to keep in mind the legislative policy and the evil which it was trying to correct or the situation it was attempting to remedy. Also it will be noted that Section 9404, General Code, is a penal statute and the rule is well established that a strict construction is to be given to criminal statutes, and persons, things or situations not clearly included within the descriptive terms thereof are not within its prohibitions. In *State v. Meyers*, 56 O. S., 340, at page 350, it was said by Williams, J.:

"Persons cannot be made subject to such statute by implication. Only those transactions are included in them which are within *both their spirit and letter*; and all doubts in the interpretation of such statutes are to be resolved in favor of the accused." (Emphasis mine.)

As has been hereinbefore noted, in the enactment of this section and the various amendments thereto, the mischief which the legislature was attempting to remedy was that of discrimination or inducement to insurance by the prohibited methods. The plan which the church desires to follow and which is outlined in your letter certainly does not constitute an inducement to insurance. If the church wished to insure the lives of each subscriber in an amount equal to the unpaid balance of his subscription, its right to do so could not be questioned, for it undoubtedly would have an insurable interest to the extent of the balance due it. Under the proposed plan the church intends not only to insure its own interest in the lives of its subscribers, but also to provide that the sub-

scriber, or some beneficiary designated by him, shall be repaid the amount which he has actually contributed under his subscription. In other words, the subscription is not an inducement to insure but the insurance is an inducement to subscribe. This plan certainly does not fall within the spirit of this statute, and in view of the applicable rules of statutory interpretation, I am constrained to advise you that the proposal does not contravene the provisions of Section 9404, General Code.

I am therefore of the opinion, in specific answer to your question, that where a church establishes a special fund known as the "Debt Retirement Fund" under the control and management of trustees, to which the members of the church subscribe in writing to pay a stipulated amount, and where as part of the plan such subscriber to the Debt Retirement Fund applies for insurance on his life payable to the trustees of the Debt Retirement Fund who are to pay the premiums on such life insurance policy and where the trustees of the Debt Retirement Fund agree to pay to a person designated by the subscriber the amount of such insurance policy less any indebtedness to the Debt Retirement Fund on account of the subscription by such subscriber, there is no violation thereby of the provisions of Section 9404, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1192.

LEASE—RESERVOIR LAND, STATE WITH ELMER KNAPKE
AND ORVEL FREDERICK, DESIGNATED PORTION, LAKE
ST. MARYS OR GRAND LAKE, MERCER COUNTY.

COLUMBUS, OHIO, September 15, 1939.

HON. DON G. WATERS, *Commissioner, Division of Conservation and
Natural Resources, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain reservoir land lease in triplicate, executed by the State of Ohio, through you as Commissioner, Division of Conservation and Natural Resources to Elmer Knapke and Orvel Frederick of Dayton, Ohio.

By this lease, which is one for a term of fifteen years and which provides for an annual rental of \$23.58, there is leased and demised to the lessees above named, permission to occupy and use for cottage site and docklanding purposes only, that portion of the inner slope and water front and the outer slope and the State land in the rear thereof, extending back to the State ditch that is included in the north-half of embankment lot No. 58, west bank, Lake St. Marys or Grand Lake, as laid out