

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 3, 1969

Kenneth P. MacLeod, President Dept. Senate
 Frank M. Hogerty, Jr., Commissioner Insurance
 From Harry N. Starbranch, Assistant Dept. Attorney General
 Subject Teachers Insurance and Annuity Association of America and College Retirement Equities Fund

SYLLABUS:

Teachers Insurance and Annuity Association of America and College Retirement Equities Fund are in violation of Maine law by transacting insurance business in this State without being licensed.

FACTS:

This Department has been requested by the Insurance Commissioner to furnish an opinion as to whether or not Teachers Insurance and Annuity Association of America and College Retirement Equities Fund, hereinafter referred to as TIAA/CREF, has transacted any insurance business in the State of Maine without being licensed as required by State law. The President of the Senate has posed the same question.

The facts have been disclosed to be substantially as follows:

TIAA/CREF is not licensed to engage in the transaction of the business of insurance in the State of Maine.

TIAA/CREF provides retirement-annuity coverage at each of the following institutions: University of Maine, Bowdoin College, Colby College, Bates College, Husson College, Ricker Institute, Westbrook Junior College, Thomas College, Berwick Academy, Hebron Academy, Waynflete School, and The Hyde School.

Life insurance is provided by TIAA/CREF to employees of the following schools: Colby College, Husson College and Hebron Academy. Long term disability is provided by TIAA/CREF at the University of Maine, Bowdoin College, Colby College and Bates College.

An investigation revealed that the plan at the University of Maine operated as follows:

All academic and administrative employees are required to join the TIAA Plan at age 30 or after they have been there three years. The employee contributes 6% of his salary and the University of Maine contributes 8% of the employee's salary.

TIAA/CREF sends representatives to the University of Maine, when requested, in order to explain the TIAA/CREF plan. An Assistant Vice President of TIAA/CREF in fact attended a meeting at the office of the Commissioner of Finance and Administration of the State of Maine at the time of the merger of the State Colleges into the University of Maine in order to plan how to prepare retirement plan information for the State College employees and to schedule meetings, if needed, on each of the then State College campuses to explain their plan and answer questions.

When and if a University of Maine employee becomes eligible for the TIAA/CREF retirement plan, he is directed to the proper office at the University where he fills out an application which is forwarded to the company by mail. Thereafter, deductions are made from the employee's salary to pay for his share of its cost. TIAA/CREF mails or otherwise sends promotional material to the University of Maine for distribution.

The Chairman of TIAA/CREF, Mr. William C. Greenough, has stated in a memorandum that: " * * * in 1967, the Supreme Court declined to review a California case, thereby confirming the authority of the State of California to regulate interstate mail order insurance, even though California's insurance law contains no specific statutory provisions regarding such insurance * * * ."

There are two pertinent sections of the Maine Revised Statutes that deal with license requirements of insurance companies. One of these sections, 24 M.R.S.A. § 501, as amended, relates to both domestic and foreign corporations and reads in pertinent part:

"An organization of any type may not transact insurance business by issuing or delivering insurance contracts in this State without first obtaining a license or certificate of qualification from the commissioner as required by this Title."

The other section, which is 24 M.R.S.A. § 521, reads in pertinent part as follows:

"No foreign insurance company shall transact any insurance business in the State, unless it first obtains a license from the commissioner. Before receiving such license, it shall furnish the commissioner with: "

QUESTION:

Whether or not TIAA/CREF has transacted any insurance business in the State without being licensed as required by 24 M.R.S.A. § 521?

ANSWER:

Yes.

OPINION:

The Supreme Court of the State of California in a well-reasoned opinion, People v. United National Life Insurance Company, et als., Cal. 2d - 427 P. 2d 199 (1967) faced the question whether the receipt of advertising material and other forms from an out-of-state direct mail order insurance company by residents of the State of California within the State of California justified regulation by the State of California. The Court said:

"Applying due process criteria which give recognition to the substantial interest of the regulating state in the insurance transactions involved, we are satisfied that in the circumstances of the instant cases there are sufficient contacts with California to justify regulation. The insureds are, of course, residents of California. The solicitation of insurance actually takes place in California where the advertising material and other forms are received by the individual addressees. Thus realistically viewed the insurer through the instrumentality of the mail is for all practical purposes soliciting

insurance here as manifestly as if it were to carry on such solicitation through representatives physically present within the state. In response to this solicitation, California residents complete and sign in this state the applications for insurance. Indeed, defendant United sends to the California addressee a pre-indorsed policy which becomes effective in this state, when the policyholder deposits in the mail here the completed 'ownership application' for return to United's home office. In all instances payment of premiums is made by California residents from funds or bank accounts located in California. It is clear that any claims made under the policies will most likely be investigated in this state and that any litigation in connection with the policies will undoubtedly be commenced in California courts. It is also foreseeable that should defendants for any reason fail to perform their obligation in accordance with the policies, California might be called upon to provide assistance for the persons within its borders who were intended to be financially assisted by the benefits under the policies.

"In short, these defendants have 'realistically entered the state looking for and obtaining business'; the main aspects of their insurance transactions are in this state; and to say that they are not doing business here 'is to completely ignore the facts of life and reality.' We think the substantial interest of California in these transactions is obvious." (Citations omitted.) Supra at page 209.

The findings in this case, upholding the validity of the California statutes designed to regulate and tax unlicensed out-of-state direct mail order insurance companies, was

appealed to the Supreme Court of the United States. The Supreme Court of the United States dismissed the appeal for "want of a substantial Federal Question." United National Life Insurance Company, et als. v. California, 389 U.S. 330 (December 11, 1967).

The substantial interest of Maine in regulating out-of-state insurance companies transacting business in the State of Maine in much the same manner as the out-of-state direct mail order insurance companies transact business in the State of California is every bit as important to the State of Maine as the regulation was to the State of California, and we are of the opinion that 24 M.R.S.A. § 521 clearly contemplates the regulation of such companies.

It is clear that if a foreign insurance company (i.e., an out-of-state insurance company) transacts business in this State, our statutes require that such a company shall be licensed. Our legislature has recognized the very practical difficulty in forcing these direct mail order insurance companies to comply with this license requirement. Therefore, the Unauthorized Insurers Act was passed, 24 M.R.S.A. § 222 through § 225, which Act, inter alia, named the Insurance Commissioner as agent for these unauthorized insurers for the purpose of service of process, 24 M.R.S.A. § 222, subsection 1; and further provided for judgments by default against these unauthorized insurers, 24 M.R.S.A. § 222, subsection 4.

Solicitation through the mail to persons residing within the State of Maine of applications for insurance contracts constitutes transacting business in this State as does the collection of premiums from persons residing within the State of Maine. The fact that these acts constitute transacting insurance business in the State is established by 24 M.R.S.A. § 222, subsection 1. This subsection reads as follows:

"1. Service upon commissioner. Any of the following acts in this State, effected by mail or otherwise, by an unauthorized foreign or alien insurer:

"A. The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein,

"B. The solicitation of applications for such contracts,

"C. The collection of premiums, membership fees, assessments or other considerations for such contracts, or

"D. Any other transaction of the business of insurance, is equivalent to and shall constitute an appointment by such insurer of the commissioner and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this State upon such insurer." (Emphasis supplied.)

The phrase "Any other transaction of the business of insurance" found in paragraph D must of necessity imply that the transaction set forth in paragraphs A., B. and C. are transactions of the business of insurance in this State.

In the case at hand, then, it is clear that not only is TIAA/CREF engaging in the insurance business in the State of Maine by use of the mails, but it is engaging in such business by sending its representative into the State, in fact to the State House itself, to arrange to provide insurance coverage, to provide insurance coverage, and to counsel and advise present and prospective insurance customers.

As a consequence of the foregoing, we are of the opinion that TIAA/CREF is engaged in the transaction of the business of insurance in the State of Maine and should be licensed. As TIAA/CREF is not so licensed, it is and has been in violation of the laws of the State of Maine.


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