

MAINE STATE LEGISLATURE

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February 2, 1976

Frank M. Hogerty, Jr., Superintendent

Insurance

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Attorney General

Maine Lung Association

Your memorandum of December 4, 1975, concerned certain aspects of a "gift annuity" program being conducted by the Maine Lung Association. The Association has submitted materials describing this program as one which involves, in general, a ". . . transaction [which] is part gift and part purchase of a commercial annuity." Simply stated, the donor/annuitant transfers to the Association a principal amount pursuant to the gift annuity contract, in exchange for the Association's guarantee of a fixed dollar annuity for the rest of the annuitant's life. When the annuitant dies, the Association retains the remainder of the original principal augmented by investment income. The annuity rates are lower than normal commercial annuities, so that an amount equal to approximately 50% of the original principal will remain for the Association.

The question is whether gift annuities described above are "insurance" as that term is used for purposes of inclusion within the provisions of the Maine Insurance Code. 24-A M.R.S.A. Ch. 1-65. We answer the question in the affirmative. Unlike certain other states, Maine does not include special provision within its Insurance Code for gift or charitable annuities and the organizations which sponsor them. [See: California Codes, Insurance, § 11520 et seq; and, New York, Insurance Law, § 45 et seq]. Nevertheless, it is our opinion that gift annuities, like regular commercial annuities, would be included within the generic category of "insurance," and therefore would be subject to regulation in accordance with the Insurance Code.

Aside from the different treatment of gift annuities for tax purposes; which is beyond the scope of this opinion, it is our understanding that a gift annuity is in all pertinent respects the same as a commercial annuity. The only significant difference would be the lower annuity rates which give the gift annuity its "gift" characteristic. However, these different annuity rates would not compel any different treatment. The term "annuity" is defined, for purposes of Title 24-A, in pertinent part as:

". . . a contract under which obligations are assumed with respect to periodic payments for a specific term or terms or where the making or continuance of all or of some of such payments, or the amount of any such payment, is dependent upon the continuance of human life. . . ."
24-A M.R.S.A. § 703 (emphasis supplied)

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A gift annuity would clearly be an "annuity" under this definition and, therefore, would be subject to those provisions of the Insurance Code which are applicable to annuities.

"Insurance" is defined by the Maine Insurance Code as:

". . . a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety." 24-A M.R.S.A. § 3 (emphasis provided)

This composite definition was added to the Code during its 1969 revision. The drafter's comments to § 3 of the revision, referred as a source to previous 24 M.R.S.A. § 421, which had read, in pertinent part:

"All corporations . . . which issue contracts whereby such corporations, in consideration of a premium to be paid annually or otherwise, agree to pay an annuity commencing in the future, or a sum fixed or to be ascertained by given methods, are made subject, in relation to doing business in this state, to all the law relating to life insurance. . ."

Furthermore, 24-A M.R.S.A. Chapter 29, entitled "Life Insurance and Annuity Contracts," contains many provisions applicable to annuities and designed to protect the rights of both parties to the annuity contract. When the provisions of Chapter 29 are read together with the definition of "insurance" stated in 24-A M.R.S.A. § 3 and its referenced statutory source, 24 M.R.S.A. § 421, the legislative intent that annuities should be treated as insurance, for purposes of the Code, becomes clear. Therefore, the Insurance Code, more specifically § 3, is broad enough to include annuities as insurance and this would apply equally to gift annuities.

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