OPINION
47-142

August 2, 1947 (OPINION)

INSURANCE

RE: Loans to Corporation - Officers

This office is in receipt of your letter of July 30, 1947, making inquiry as to whether or not an insurance company may legally make a loan to another corporation in a case where some of the officers and directors of an insurance company are also officers and directors of the corporation requesting a loan.

It may be stated as a general proposition that corporations controlled and managed by the same officers have a right to deal with each other and the mere fact that some, a majority, or all of the directors or contracting officers of two corporations are common to both does not make a contract between the two corporations absolutely void or incapable of ratification, in the absence of other facts showing fraud. It is voidable only; and it becomes binding and unassailable when ratified by each corporation either expressly or by acquiescence and lapse of time. (19 C.J.S., s. 789, pp. 166-167).

It should be observed that the law quoted has reference to transactions between corporations governed by general laws and would hardly apply to transactions between a corporation like an insurance company which is under strict supervision of a state department under special statutes relating to the general business of domestic insurance companies. The insurance department of the state is vested with supervision over all domestic insurance companies for the purpose of protecting the rights and interests of policyholders. Consequently, all transactions by a domestic insurance company are subject to the closest scrutiny by the state insurance department.

It may be observed that ordinary transactions, such as leasing property by one corporation to another, or purchasing commodities by one form another, are materially different from the making of a loan by an insurance company under strict supervision of the state to another corporation where directors and officers of both corporations are the same.

Subsection 6 of section 26-0810 of the 1943 Revised Code provides as follows:

> "No domestic insurance company shall:
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> "Invest its capital, surplus funds, or other assets in, or loan the same upon, any property owned by any officer or director of the company, or by any of the immediate members of the family of any such officer or director, nor in any manner which will permit any such officer or director to gain through the investment of funds of the company."

The statute quoted has a broad application and vests the insurance commissioner with the power, and makes it his duty, to scrutinize

loans made by domestic insurance companies. The resources and assets of insurance companies are largely the proceeds of premiums paid in by policyholders, and it is the duty of the commissioner of insurance to ascertain whether any loans made would be prejudicial to their rights and interests.

It is generally held that the validity of a contract is determined by its general tendency at the time it is made, and if this is opposed to the interests of the public it will be invalid, even though the intent of the parties was good and no injury to the public would result in the particular case. The test is the evil tendency of the contract, and not its actual injury to the public in a particular instance. State ex rel. Spillman v. First Bank, 114 Neb. 423, 207 N. W. 674, 45 A. L. R. 1418.

While there may e some doubt as to whether a loan made by an insurance corporation to another corporation, where both have the same officers and directors, is illegal, yet under the provisions of the statute quoted we believe it would be contrary to public policy and in our opinion it should be disapproved.

NELS G. JOHNSON

Attorney General