

Memorandum: NASD v. VALIC; SEC v. VALIC, Nos. 237, 290, 1958 Term

“It is generally held that an annuity contract is not a contract of insurance but the insurance laws generally regulate the issuance of annuities...” Vance, Insurance 88. This statement is borne out by the statutes and cases I have read.

The state statutes commonly embrace the issuance of annuities within the purview of their regulation. California defines “life insurance” to include “annuity contracts.” (Calif. Ins. Code § 101). Illinois in accord. (Ill. Stats, Ch. 73, § 616), as is Minnesota. (Minn. Stats., §61.03) (although in Minnesota approval is not required of an annuity contract before its issuance as it is for life insurance policies. §61.38(1)). In Massachusetts a domestic corporation needs a certificate indicating its compliance with the state’s regulations before it can issue an insurance or annuity contract. Mass. Stats. Ch. 175, §32. The District of Columbia, like the other jurisdictions, embraces the “business of insurance” within its insurance code. Whereas life insurance policies need not be approved before issuance by the insurer (although they must contain certain provisions and cannot contain certain others-§35-703 & 704) annuity and endowment contracts must be approved by the superintendent before issuance. (§35-705). It seems clear that companies which issue only annuity contracts are “insurance companies” subject to the regulatory provisions of the D-C Code although there is no explicit definition. The instant case seems to bear this out.

There have been two cases holding that state statutes requiring advanced approval of life insurance policies before their issuance did not cover annuity contracts. (Hall v. Metropolitan Life Ins. Co., 146 Ore. 32; Hamilton v. Penn Mutual Life Ins. Co., 196 Miss. 345). The Oregon result has been changed by statute. In the Mississippi case it was said that “annuity policies . . . are such as a life insurance company is authorized to issue and therefore are subject to the

provisions of our statute regulating the business of life insurance companies.” See Miss. Stats., §5654; 5680.

Since annuity contracts are only issued by life insurance companies there has been no litigation as to whether companies issuing annuity contracts are subject to general requirements applicable to all insurance companies (i.e., reporting of financial statements; regulations concerning corporate structure and management; regulations of brokers and agents). My general conclusion is that, while states in their regulatory statutes do distinguish between annuity contracts and life policies, they are both treated as legitimate objects of regulation by insurance commissioners.

(I neglected to include a mention of the New York situation. There annuities are defined in the statute (N.Y. Ins. Law §46). In *People v. Supreme Council*, 193 Misc. 996, it was held that a company selling what were construed to be annuity contracts could be liquidated by the Insurance Commissioner under a statute empowering him to liquidate companies doing the “business of insurance” without a license.

Special problems arise concerning the nature of annuities in the tax area. The 6 state decisions I have on whether annuity payments are “insurance” receipts for the purpose of inheritance tax exemptions are unanimous in holding that they are not exempt. (Cases in California, Louisiana, Massachusetts, New York, New Jersey, Pennsylvania). As for taxes on the income of insurance companies there is more diversity of opinion. Of the 13 cases I have 7 hold that receipts from the sale of annuity contracts are included within the “premiums received” or similar statutory phrases and are included in the measure of a tax. (California, Iowa, Kansas, Arkansas, New Hampshire, Missouri, Mississippi). 6 cases hold receipts from the sale of annuities not included in the tax. (Pennsylvania, New York, Arizona, North Dakota, Wyoming,

Texas). There are some differences in the statutory language that might serve to distinguish some, but not all, of the cases.