In O.A.G. 3448, this question was considered in depth, and the conclusion reached that since the Home Rule Act spells out no procedure specifically designed to obtain a charter for a city resulting from consolidation proceedings, therefore no procedure for effectuating the consolidation exists.

After extended examination of the relevant statutes and cases, it is my conclusion that the intent of the legislature as expressed in Section 6 and following of the Home Rule Act, and as construed by the Michigan Supreme Court in *Taliaferro,* cannot properly be thwarted merely for want of detailed language specifically dealing with the procedure for implementing the organization of the government of the new city. When the electors vote on the question of consolidation, they are in effect voting on the question of intent to incorporate a new city. Therefore, Section 15 of the Home Rule Act is applicable and its procedures may be employed.[10]

It is my conclusion that the provisions of Section 15 of the Home Rule Act, providing that those electors residing within the territorial limits of the proposed new city shall have been entitled to vote for 9 members of a charter commission, can be used to provide a method for organizing the government of a city created by consolidation. This can be done by use of a separate ballot under the heading "Candidates for members of the charter commission," as set forth in Section 15 of the Home Rule Act.

Therefore, the answer to your sixth and last question is that the procedure outlined in Section 15 of the Home Rule Act for use of a separate ballot for members of the charter commission be followed, to the extent applicable to the consolidation you describe.

FRANK J. KELLEY,
Attorney General.

640922.1

BANKS AND BANKING: Debt Cancellation Contracts.
INSURANCE:

Use of debt cancellation contracts by bank whereby bank undertakes to cancel the balance of a debt in the event of the death of debtor constitutes insurance.

No. 4351 September 22, 1964.

Mr. Allen L. Mayerson
Commissioner of Insurance
Lansing, Michigan

You have requested the opnion of the Attorney General on the following questions:

"1. Is a bank which enters into debt cancellation contracts with its debtors engaged in the business of insurance?

"2. If the answer to question number 1 is in the affirmative, is the regular execution of such contracts subject to supervision and regula-

[10] E.g., City of Dearborn. C.L.S. '61 § 117.15; M.S.A. 1963 Cum. Supp. § 5.2094.

tion by this department under section 602(3) or any other applicable section of the Michigan Insurance Code?"

From your description a debt cancellation contract is an agreement whereby a creditor, in this instance a bank, undertakes to cancel the balance of a debt in the event of the death of the debtor. Such contracts constitute insurance. *Ware v. Heath, et ux.,* 237 S.W. 2d 362 (Texas 1951); *Attorney General ex rel Monk, Insurance Commissioner, v. C. E. Osgood Co.,* 144 N.E. 371 (Mass. 1924); *Ruto v. Italian Burial Casket Co., Inc.,* 158 A 657 (Pa. 1932).

In the example cited in your letter, the bank would impose an additional charge for such a contract and establish reserves based on actuarial computations. The court authorities referred to above did not have such factors to consider in reaching their conclusions. It is therefore obvious that the presence of such factors would lend considerable strength to their conclusions.

The Insurance Code of 1956,[1] as amended, provides in Section 120 as follows:

> "No person shall transact an insurance or surety business in Michigan, or relative to a subject resident, located, or to be performed in Michigan, without complying with the applicable provisions of this code."

The term "person," as used in section 120 of the Code is broadly defined in section 114 of the Insurance Code[2] and would apply to any bank doing business in Michigan. Since the use of debt cancellation contracts would constitute the transaction of an insurance business, it follows that a bank using such contracts would be required to comply with the Insurance Code as an insurer.

It is unnecessary to your questions to determine the specific provisions of the Insurance Code which would apply.

Since your inquiry is precipitated because of the position recently taken by the Comptroller of the Currency that national banks may use debt cancellation contracts as a proper exercise of their banking powers, it is necessary to make the observation that in view of 15 U.S.C.A. § 1012(b)[3] national banks would not be exempt from State regulation so far as such contracts are concerned. No provision of the National Bank Act[4] specifically relates to the business of insurance, nor are national banks exempt from applicable State laws which do not interfere with the purpose of their creation or conflict with express powers given them by federal law. *Peoples Savings Bank v. Stoddard,* 359 Mich. 297, 328; *Attorney General ex rel. Banking Commissioner v. Michigan National Bank,* 298 Mich. 417, 426.

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[1] C.L.S. 1961 § 500.100 et seq.; M.S.A. 1957 Rev. Vol. 17A, § 24.1100 et seq.

[2] " 'Person' as used in this code includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity."

[3] "No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance."

[4] 12 U.S.C.A. §§ 21 et seq.

Therefore, the answers to both questions are 'yes.'

FRANK J. KELLEY,
Attorney General.

640923.1

INSURANCE: Credit Insurance Act.
LOANS: Small Loan Act — Regulatory Loan Act of 1963.

The amount of group credit life insurance on the life of a borrower on a loan made pursuant to the Regulatory Loan Act of 1963 may not exceed the exact amount of the total obligation of the borrower to the creditor on the date of death, the total obligation being the unpaid principal plus accrued interest to the date of death.

No. 4334 September 23, 1964.

Mr. Allen L. Mayerson
Commissioner of Insurance
Lansing, Michigan

You have requested my opinion on the following questions:

"1. What is the meaning of the word 'indebtedness' as used in Act 173, Public Acts 1958, section 3(5) and section 5, and the Regulatory Loan Act of 1963, section 13(a)?

"2. Should the amount of insurance on a loan (executed through a small loan licensee) be only the amount of money advanced or may it further include the total of the charges payable?"

Section 13a[1] of the Regulatory Loan Act of 1963, which licenses the small loan business, authorizes licensees at the option of the borrower, to obtain or provide life insurance or the borrower may obtain his own insurance. This section does not set forth the amount of insurance which may be obtained or provided by a licensee, but it does state that "All additional requirements of Act No. 173 of the Public Acts of 1958 shall apply to transactions under this subsection."

Section 3(5) of Act 173, P.A. 1958,[2] known as the Credit Insurance Act, defines the term "indebtedness" as follows:

"As used in this act: * * * 'Indebtedness' means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction."

Section 5 of said Act 173[3] reads as follows:

"The amount of credit life insurance shall not exceed the indebtedness. Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance the amount of insurance shall not exceed the approximate unpaid indebtedness on

[1] Added by Act 103, P.A. 1963 to Act 21, P.A. 1939; M.S.A. Cum. Supp. § 23.667(13a).

[2] C.L.S. 1961 § 550.603; M.S.A. 1963 Cum. Supp. § 24.568(3).

[3] C.L.S. 1961 § 550.605; M.S.A. 1963 Cum. Supp. § 24.568(5).