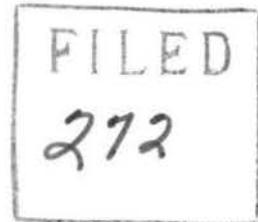


December 11, 1972

OPINION LETTER NO. 272  
Answer by Letter - Boicourt

Honorable J. William Holliday  
Prosecuting Attorney  
Clark County  
Post Office Box 140  
Kahoka, Missouri 63445



Dear Mr. Holliday:

This letter is in response to your request for an official opinion from the Office of the Attorney General concerning the following question:

"Is it a violation of Section 463.070, RSMo, 1969, for a funeral home to enter into a pre-arranged funeral plan with a Missouri resident which provides for the individual to deed real property to the owner of the funeral home, the individual retaining life estate, as consideration for the funeral arrangement agreement."

Chapter 436, RSMo 1969, deals with one type of special purpose contract, i.e., prearranged funeral agreements. This chapter was enacted into law by the Missouri Legislature in 1965. The title of the act is "An Act relating to the sale of personal property or services under prearranged funeral agreements, contracts or plans, regulating the disposition and handling of moneys paid thereunder, and providing penalties for the violation thereof." Section 436.010, RSMo 1969, defines the type of contract meant to be regulated as:

"Any agreement, contract or plan requiring the payment of money by a purchaser in a lump sum or in installments, which is made or entered into with any person, association,

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partnership, firm or corporation who, in consideration thereof, agrees to provide for the final disposition of a dead human body, or for funeral or burial services, or for services to be rendered in negotiating such arrangements or providing for discounts with respect thereto, or for the furnishing of personal property or funeral or burial merchandise, wherein the delivery of the personal property or the funeral or burial merchandise and services in connection with the negotiation of such arrangements, allowance of discounts, or the furnishing of professional services by a funeral director or embalmer, is not immediately required, . . ."

Any such prearranged funeral agreement must be represented by a written memorandum consistent with the provisions of Chapter 436. The remainder of that chapter provides for the disposition and handling of moneys paid under such an agreement. Section 436.020 requires moneys paid under such an agreement to be deposited with certain enumerated banking institutions and provides the disposition of income earned on such moneys deposited. Section 436.030 provides that moneys so deposited must be held by a banking institution, the account to be in the name of the seller and purchaser involved in the agreement, until at least five days after the death of the purchaser and provides for the withdrawal of the money so held by the seller upon his having rendered the services or merchandise contracted for. Section 436.040 requires that in the event the money is not deposited in accordance with Section 436.030, the seller may retain a portion of money paid under the agreement (up to twenty percent of the total agreed to) and that the remainder of the money so paid shall be held in trust for the duration of the life of the purchaser. Section 436.050 sets forth the duties for the seller in the event that the purchaser dies in an area removed from the locale of the seller. Section 436.060 makes provision for the cancellation of the contract. Section 436.070, the section mentioned in your opinion request, makes the violation of Chapter 436 a misdemeanor. Section 436.080 provides that violations of the chapter may be enjoined.

We believe that it is apparent from the clear language of Chapter 436 that a prearranged funeral plan in which the purchaser conveys real property to the seller, a funeral director, and retains a life estate in that real property is not governed by any provision of the chapter in question. Chapter 436 concerns only "Any agreement, contract or plan requiring the payment of money. . . ." (Emphasis added). That chapter provides

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for the disposition or handling of moneys paid under such agreements. It does not expressly apply to agreements wherein the consideration is real estate, the life estate in which is retained by the purchaser. Therefore, the penalty provisions of Section 436.070, RSMo 1969, do not apply to such an agreement because the handling or disposition of moneys is not involved.

You have enclosed a copy of an agreement between the funeral home and Bessie Reba, part of which is illegible, which states that there was paid to the funeral home \$992.80 and which further states that the funeral home will return money paid under certain circumstances. We have in writing this opinion letter not considered the question whether the agreement you enclosed actually states the true facts as to the transaction but have written the opinion letter based on the specific facts in the request.

The opinion expressed is a response only to the narrow question raised by your opinion request. We express no opinion as regards the validity or legality of the particular arrangement which you set forth in your request as it might be affected by other laws of this state.

Very truly yours,

JOHN C. DANFORTH  
Attorney General