

INSURANCE DEPARTMENT:

What constitutes an insurance contract and the doing of insurance business in this state. Penalty for transacting insurance business in this state without authority.

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May 12, 1933

Insurance Department  
Jefferson City, Missouri

# 44

Gentlemen:

Receipt of your letter dated April 12, 1933, is acknowledged. The letter is as follows:

" A number of unlicensed companies are attempting to do business in Missouri both by mail and through representatives. The literature of two of these companies, The National Aid Association and Lincoln Aid Association, is enclosed.

We should like your opinion as to whether the business transacted by such companies is insurance within the meaning of the Missouri Statutes. If it is insurance, what steps can be taken to prevent solicitation of members in this state.

Is it permissible for unlicensed insurance companies to advertise and solicit business through radio stations located within the state?"

Attached to your letter is a purported application for certificate of membership in Lincoln Aid Association of Wilmington, Delaware; also copy of purported form of certificate or contract presumed to be in use by the Lincoln Aid Association; also attached to your letter in connection with the foregoing are various promotion circulars; a letter of the president of the company with

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reference to prospective salesmen for the company and also magazine advertising used by the Lincoln Aid Association. Also attached to your letter are substantially the same application, certificate and literature of the National Aid Society, said to be incorporated under the laws of the State of Indiana.

The purported application for certificate of membership in the Lincoln Aid Association states that it is:

"Application for Certificate of Membership in  
Lincoln Aid Association of  
Wilmington, Delaware",

then follows space for name and address of the applicant, name and address of beneficiary.

It is further stated in the application that the application shall be considered a part of the contract for membership.

It is further stated in the application:

"It is also agreed that there will be no liability on the part of the Association unless and until the certificate of membership is issued and delivered to me, while I am alive and in good health, free from disease and that no liability shall exist against the Association if any of the answers to the above questions relative to my health on the date below are found to be untrue."

The application further appoints and constitutes the board of directors or a majority thereof as attorney in fact for the applicant, to cast the vote of the applicant at any meeting.

The form of certificate or contract states that the Lincoln Aid Association agrees that for the consideration of a membership fee of \$4.00 and a registration fee of \$1.00, the application executed by the member and the further payment of all amounts required to be paid under the conditions of the certificate during its continuance, the person named in the certificate (hereinafter to be called the member) is entitled to all benefits as provided in the by-laws of the

association and in the event of the natural or accidental death of the member, the beneficiary named in the certificate or contract is entitled to the benefits designated in a schedule set out on the face of the certificate, to-wit:

"Persons from 1 to 10 years inclusive, \$500.00;  
11 to 55 years inclusive, \$1,000.00;  
56 to 65 years inclusive, \$750.00;  
66 to 70 years inclusive, \$500.00;  
71 years and over, inclusive, \$250.00."

Provision is made for the payment of disability benefits when such disability is suffered through violent, external and purely accidental means and a schedule of the amounts to be paid for such disability is set out on the face of the certificate or contract; then is provided a space for the name of the Company, its registrar and president.

Certain purported by-laws are printed on the certificate. Section 2 of Article I of the by-laws states:

"Section 2. Purpose - To unite reputable men and women who are wage earners, for the purpose of giving aid to the widows, creditors and those dependent on its deceased members. "

Section 4 of Article I of the by-laws provides as follows:

"Section 4. Certificates - When an application is accepted by this association and the membership fee in advance is paid, the association will issue to such applicant a certificate, but no liability shall arise thereon against the association, nor any benefit be due to the applicant until the issuance of such certificate and its delivery to and acceptance by the applicant, while such applicant is alive and in good health."

Article IV provides for the amount of benefits to be paid members under certain contingencies.

Article V of the by-laws provides in part as follows:

"Section 1. When a death or permanent disability shall occur to a member to whom this contract is issued and the association is liable therefor,

it shall be the duty of each member to make a contribution, if the directors deem it necessary, which contribution will be \$1.00. This is the only time a contribution is required, except for expenses."

The purport of Article V is explained at the close thereof by the following:

"Guaranteed costs: The above section provides that in no case can the directors call on the members to contribute more than \$1.00 a month for death claims, making the guaranteed cost for death claims not to exceed \$12.00 yearly. There is absolutely no other contributions called for, except expenses and even that is limited to an amount not to exceed \$4.00 during any twelve month period."

Section 1 of Article VI of the by-laws provides for the giving of notice to the secretary of the association in case of death of a member.

Article VII of the by-laws provides that upon death or permanent disability of a member of the association, who is a member in good standing the secretary shall mail the beneficiary blank proof of claim which shall be completed and filed with the association and if the claim is approved by the directors of the association, the secretary of the association shall notify the members of the fact that a contribution is due, if a sufficient amount is not already in reserve to pay the claim and it is further provided in such Article VII that:

"Every member of this association shall, within thirty days after the mailing of any notice, of contribution, pay the amount thereby requested from him or her, and the failure so to do shall ipso facto suspend the member so failing from all rights and benefits in this association".

Section 2 of Article VII of the by-laws reads as follows:

"Section 2. All payments made by any member now or hereafter are voluntary contributions for the purpose of aiding members of this association, and to take care of expenses of said association".

Section 4 of Article VII of the by-laws reads:

"Section 4. It is the purpose and object of this association to furnish protection to the beneficiaries of the members hereof. Before a person is eligible to become a member, it is absolutely necessary that they be in good health, free from any disease or disability".

Section 5 of Article VII undertakes to fix the time within which suits may be brought against the association on account of matters arising out of the certificate or contract.

The certificate or contract recites that the Lincoln Aid Association is chartered by the State of Delaware. We take it therefore that it is a corporation organized under the laws of the State of Delaware. The liabilities provided for in the certificate or contract are the liabilities of the Lincoln Aid Association. It is recognized in the certificate that suits may be brought against the association growing out of the certificates issued by it. While it is stated in the certificate that the payments made by the members are voluntary contributions, yet it is also provided that members who fail to pay these contributions lose all of their rights of membership in the association. There is nothing in the certificate or contract which bears any resemblance to reciprocal or inter-insurance between persons who voluntarily band themselves together to insure each other.

A contract of insurance is defined in Words and Phrases, Volume 4, page 348, as follows:

"An ordinary 'contract of insurance' is defined as an agreement to pay a given sum on the happening of a particular event, contingent on the duration of human life in consideration of the immediate payment of a smaller sum or a certain equivalent periodical payment."

The foregoing is the general definition of a contract of insurance accepted by all of the authorities in this country. See

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Pirics v. First Russian Slavonic Greek Catholic Benevolent Society, 83 N. J. Eq. 29;

Tourtlott v. Insurance Company, 126 Me. 118;

Baltimore Life Insurance Company v. Floyd, (Del.) 91 A. 653, 655;

Attorney General v. Osgood, 144 N. E. 377.

It is our opinion that the foregoing certificate if and when issued to an insured by the Lincoln Aid Association, would be an insurance contract and if applied for in and delivered to a resident of the State of Missouri would constitute a transaction of insurance business within the meaning of the Missouri statutes.

If such business is conducted in this state without authority from the Superintendent of Insurance, any agent or solicitor for the company who acts for them as agent or solicitor in this state, could be prosecuted by virtue of Section 5908, Revised Statutes Missouri, 1929.

Any person or persons acting as agents or solicitors for any such company not licensed to do business in this state where such agency or solicitation is carried on or made by means of a radio located in this state, would be guilty under the provisions of said Section 5908.

The purported application and certificate in use by the National Aid Society, submitted with your letter, are in substance the same in character, form and meaning as the application and certificate of the Lincoln Aid Association and what is said as to the Lincoln Aid Association application and certificate applies equally to the application and certificate of the National Aid Society.

We are returning you herewith the files and exhibits transmitted to us with your letter of April 12, 1933.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General,

APPROVED:

ROY McKITTRICK  
Attorney General.

GL:LC