

FUNERAL CONTRACT: Issuance and performance of death benefit contract as violation of R. S. Missouri, 1929, Articles 9 and 10.

March 12, 1935.

Hon. Dwight H. Brown,  
Secretary of State,  
Jefferson City, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of February 14, 1935, such request being in the following terms:

"This Department is receiving inquiries from various parts of Missouri concerning a type of death benefit contract which is being used by undertakers. Please find contract of J. Fred and Emma C. Terhune of Savannah, and one of Orr and Company of St. Vernon, attached hereto.

Briefly, the contract provides that the holder of the contract (who must be in good health at the time the contract is signed) must pay \$1 membership fee and 50¢ per month. In return for these payments, the undertaker will furnish a complete funeral, including casket, embalming, robe, dress, grave marker, hearse and services of funeral director, up to \$100.00.

It is possible that this form of death benefit may come within the jurisdiction of the Insurance Department of Missouri. Sec. 3909 expressly prohibits any association of individuals, and any corporation transacting in this state any insurance business without being authorized to do so by the Superintendent of Insurance. There are certain exceptions, however, such as an association 'having a lodge system with ritualistic form of work', which does not apply to our present problem. Sec. 5014-5023 covers associations for the purpose of furnishing funeral or burial benefits for their members, and Sec. 5018 provides penalty of fine and imprisonment for anyone who shall furnish or attempt to furnish any burial or funeral benefit without first complying with the provisions of this article. It would appear that these contracts in question are in direct conflict with Sec. 5018.

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It has also been suggested that these contracts perhaps come within the scope of Sec. 4986.

I have been asked whether these contracts are within the scope of the Missouri Securities Act, Sec. 7724 (c), and if not within its scope, what sections of the statutes cover. Your ruling is respectfully requested."

The two specimen contracts sent with your letter are substantially identical, and we therefore set out one of them, which is as follows:

"MEMBERSHIP CONTRACT

-with-

ORR AND COMPANY-

Of Mt. Vernon, Missouri

Phones 53-22 and 53-222

All collections made  
at Office of Orr & Co.

THIS IS TO CERTIFY THAT  
having paid the membership fee of \$1.00 is a member of the Orr & Co. Undertaking Co. Mortuary Contract, and is entitled to all benefits and privileges set forth in the articles of agreement, as follows.

In consideration of \$1.00, above mentioned, the Orr & Co. Mortuary burial contract upon the death of \_\_\_\_\_ or the death of any member of his or her family consisting of the following named persons (who must be in good health at the time of signing the same) \_\_\_\_\_

Agree to furnish a complete funeral, consisting of the following articles: CASKET, EMBALMING (when desired), ROBE, DRESS, GRAVE MARKER, HEARSE, and SERVICES OF FUNERAL DIRECTOR, within fifty miles of Mt. Vernon, Missouri.

The Orr & Co. Mortuary Contract is a plan for the sole purpose of taking care of its members at a reasonable expense of burial.

The holders of these Contracts shall be required to pay an assessment of fifty cents the first of each month. This is to take care of the deaths which may occur from month to month. Said assessment will not be oftener than once each month. This Contract will be

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null and void if the fifty cents is not paid by the tenth of each month.

This Contract will be null and void if the applicant is not in good health at the time of the application for membership.

In the case of death all members must receive services from Orr & Co. Undertaking Co., Funeral Directors of Mt. Vernon, Mo.

The owners of this contract will not be responsible for the burial expense to any other Undertakers, unless Orr & Co. Mortuary are first informed of death of said member and said firm of Orr & Co. Mortuary make arrangements for another Undertaker to furnish said funeral merchandise.

Funeral merchandise used in this plan is on display at the Undertaking Room of Orr & Co. Mortuary subject to inspection at any time. A credit of \$100.00 will be allowed any member who may wish a more expensive funeral than that furnished by the Contract.

The value of the said Contract is as follows: All members over ten years old \$100.00; Children under ten years old \$50.00. There is no age limit, except a child must be at least one month old before he or she can become a member. It is further agreed that a child born into the family may become a member at the age of one month, by parents registering name with Secretary.

Should the death of a member occur at a point impossible for the firm of Orr & Co. Undertaking Co. to care for, then the Contract holder will be entitled to a casket, outside box and robe equal in value to \$100.00 which will be sent to the place where member is dead.

In witness whereof the Orr & Co. Mortuary Funeral Contract has caused this instrument to be executed by its President and Attested by its Secretary.

Name and Address of Contract Holder:

\_\_\_\_\_  
President.

\_\_\_\_\_  
Secretary.

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As we understand your letter, your chief interest is in knowing if this contract as executed and performed, violates any law of this State, and if so, under what law could proceedings be brought on account of it.

R. S. Missouri, 1929, Section 5018, which is contained within Chapter 32 of such statutes relating to corporations, and within Article 10 of such chapter which relates to benevolent, religious, scientific, fraternal-beneficial, educational and miscellaneous associations, is as follows:

"Any person, who, for himself, or as the agent for any firm, company, corporation, society or association, shall furnish, or attempt to furnish, any burial or funeral benefit without first complying with the provisions of this article, shall be guilty of misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than three months nor more than six months, or by both such fine and imprisonment."

On its face this statute would clearly apply to the benefits furnished under the contract under consideration, unless Section 5019 withdraws it from the application of Section 5018. Section 5019 provides as follows:

"This article shall not be so construed so as to apply to life insurance companies, associations or societies authorized to do business under the provisions of chapter 37, R. S. 1929, nor to any society which pays sick or disability benefits exclusively to its members; nor to any society which limits its membership to a particular class of persons, or to the members of a designated person, firm or corporation; nor to any society composed exclusively of the employes of any department of any municipal, county or state government, or to the employes of any department of the national government."

These exceptions under Section 5019 do not include the contract in question. It is necessary to consider, in determining the applicability of Section 5018, if the company issuing this contract is a life insurance company, association or society under the meaning of the insurance laws of this State, because the exception is only applicable to companies, associations or societies authorized to do business under the insurance laws, and we gather from your letter

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that the State has not given its sanction to the issuance of the contracts in question by the issuance of a permit or charter under any statute of this State.

We have found no cases interpreting the provisions of Sections 5018 and 5019.

R. S. Missouri, 1929, Chapter 32, Article 9, relates to Co-operative Companies. Section 4936, contained in such article, defines the companies to which the article is applicable, and on its face this statute would lend itself to the construction that to do business by executing and performing contracts of the type under consideration would bring the company or firm doing such business within the provisions of such Section 4936. Although companies under this article ~~was~~ under the jurisdiction of the supervisor of building and loan associations (Sections 4987, 4991 and 4993), the courts in construing this article have not confined its application to companies or firms doing business related to a building and loan business, but have held it to be applicable to devices to sell or dispose of diamonds (State ex rel. Hickman v. Preferred Tontine Mercantile Co., 184 Mo. 150, 82 S.W. 1027 (1904)), and suits of clothes (State ex rel. Cantley v. Meyer Tailoring Co., 25 S.W. (2nd) 98 (1929)).

As to whether or not this contract is a security within the meaning of the Missouri Securities Act (R.S. Missouri, 1929, Section 7724 (c) ) we refer you to our opinion to you dated July 24, 1934, dealing with the "Guardian Foundation". As we pointed out in that opinion, there is no authority in this State on whether or not a funeral benefit contract is a security within the meaning of the statutes, and the cases in other states construing similar statutes are not in sufficient agreement to make it possible for us to say that this type of contract is or is not a security, and in view of the fact that there are two statutes of this State which seem with a reasonable degree of certainty to be applicable to the business in question, it would seem to us inadvisable to attempt to invoke a third statute the applicability of which is in doubt.

In conclusion, it is our opinion that engaging in the business of issuing and performing contracts in the form submitted with your letter and set out above, without obtaining any authority from the State of Missouri for the same, is a violation of the laws of this State, and that proceedings to enforce liability for such acts could appropriately be brought under either Article 9 or Article 10 of R.S. Missouri, 1929.

Very truly yours,

APPROVED:

EDWARD H. MILLER  
Assistant Attorney-General

ROY McKITTRICK  
Attorney-General