

INSURANCE:

Fully described Pre-Arranged Burial Agreement purportedly sold by McMikle Funeral Home, East Prairie or Charleston, Missouri, is a contract of insurance within language of Sec. 375.310 RSMo 1949.



August 1, 1955

Honorable Weber Gilmore  
Prosecuting Attorney  
Scott County  
Sikeston, Missouri

Dear Mr. Gilmore:

The following opinion is rendered in reply to your request reading as follows:

"The McMikle Funeral Home is selling throughout Southeast Missouri what is termed a Pre-arranged Burial Agreement. This office is familiar with several of the Attorney General's opinions heretofore issued by your office holding that burial agreements are insurance contracts unless the seller has complied with the insurance laws of the state. McMikle has no insurance license.

"I have obtained a typewritten draft of this insurance agreement which McMikle Funeral Home contends is not a violation of the law and have had cited me a copy of your opinion to Hon. C. Lawrence Leggett, Superintendent of the Division of Insurance dated September 15, 1954, regarding the Flora Hills Memorial Chapels, Inc. It has been pointed out to this office that the McMikle agreement does not fall into the category of insurance.

"Will you please advise this office if the enclosed contract is a contract of insurance within the meaning of the language contained in Sec. 375.310 R.S. Mo. 1949."

Provisions of the sample contract referred to in your letter quoted above are set out in full in order that no

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doubt will be entertained as to the contract provisions to which this opinion is addressed. We quote the sample contract in the following language:

"McMIKLE

"Pre-Arranged Burial Agreement

"I hereby request the McMikle Funeral Home, East Prairie, or Charleston, Missouri, to take charge of my body at the time of death, furnish all items incident to my burial, properly conduct my funeral, all in accordance with the pre-arranged Burial Agreement hereinafter set out, in the amount of \$250.00.

"In consideration of the hereinafter set out agreement, I hereby agree to pay the sum of \$250.00 in equal installments of \$1.00 per month on the first day of each month hereafter until said sum is fully paid. I further agree that should I fail to make such monthly payments by the 20th day of each month then this contract shall be void and of no effect and that there shall be no liability thereunder, all payments being made hereunder being forfeited as liquidated damages for the breach of this agreement.

"In consideration of the payment of \$1.00, and the payment of the sum of \$1.00 each month hereafter on the first day of each month after date hereof, the McMikle Funeral Home, East Prairie or Charleston, Missouri, agrees that in the event of the death of the undersigned, to take charge of and conduct the funeral of the undersigned, and furnish the following merchandise and services to the value of \$250.00:

1. Transporting body to preparation room.
2. Bathing the body.
3. Embalming the body.
4. Furnish casket and outside box.
5. Returning the body to family residence, if requested.

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6. Furnishing hearse service.
7. Use of funeral home and chapel.
8. Use of drape set and catafalque.
9. Use of folding chairs.
10. Furnish door badge.
11. Furnish death certificate and burial permit.
12. Furnish one family car.
13. Personal services.
14. Furnish evergreen.
15. Lowering device and grave tent.
16. Furnish grave marker.
17. Furnish flower racks.
18. Attend to flowers.
19. Furnish acknowledgement cards.
20. Attend to filing insurance claims.

"In the event that the deceased has died a distance in excess of 50 miles of East Prairie or Charleston, Missouri, or in the event the burial is to take place at a distance of more than 50 miles of East Prairie or Charleston, Missouri, in each instance a reasonable charge shall be made for distance traveled in excess of 50 miles.

"This agreement does not include cemetery lot, grave or opening of the grave; nor does it include the necessary clothing for the deceased.

"The McMikle Funeral Home agrees to furnish, free of extra charge, ambulance service within a radius of 50 miles of East Prairie or Charleston, Missouri, to the undersigned, said service not to exceed two trips during any one calendar year.

"All of the benefits and provisions of this agreement may inure to any member of the immediate family of the undersigned should such contingency arise, upon payment of the unpaid installments due under the contract.

"Nothing herein contained shall be construed as a policy of insurance whereby the McMikle Funeral Home agrees to pay any money under the terms of this agreement.

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"Dated at East Prairie or Charleston, Missouri,  
this 1st day of May, 1955."

John Smith

Witness: Jim Jones

McMIKLE FUNERAL HOME

By Elgin McMikle "

Summarizing the essential provisions of the sample contract quoted above, we find that McMikle Funeral Home, through Elgin McMikle, agrees to furnish to the contract holder twenty specified services upon his death, with such services being valued at two hundred and fifty dollars; that the contract holder agrees to pay the said sum of two hundred and fifty dollars in monthly installments of one dollar per month, thus making the normal installment life of the contract cover a period of approximately twenty years; that the rendition of such services to the contract holder who has not defaulted in his monthly payments is unconditional, as evidenced by this particular language found in the contract:

"In consideration of the payment of \$1.00, and the payment of the sum of \$1.00 each month hereafter on the first day of each month after date hereof, the McMikle Funeral Home, East Prairie or Charleston, Missouri, agrees that in the event of the death of the undersigned, to take charge of and conduct the funeral of the undersigned, and furnish the following merchandise and services to the value of \$250.00: \* \* \*";

that the contract does contain a provision in relation to its benefits which seeks to make the benefits of the contract provisions inure to any member of the contract holder's immediate family, such provision being as follows:

"All of the benefits and provisions of this agreement may inure to any member of the immediate family of the undersigned should such contingency arise, upon payment of the unpaid installments due under the contract."

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In the absence of purposeful fraud it is not reasonable to conclude that the provision just quoted, concerning the insuring of benefits to members of the contract holder's immediate family, was intended in any way to limit the direct promises made to the contract holder with reference to the services to be rendered. This being so, we have here a promise to render services of a designated value upon the death of the contract holder, with the promisor being relieved of his obligation only in the event of default by the contract holder in making his monthly payments of one dollar. Here we find the element of "risk" so essential to a contract of insurance. Should the contract holder die prior to making all payments to become due under the contract, that which he will receive in services will not necessarily bear any true relationship in money value to the agreed value in money of the services to be rendered, and such circumstance presents the tangible risk being insured under the contract. Having summarized the contract under review, we now refer to the applicable statute and case law.

Missouri statutes do not define a "contract of insurance." The essential elements of a contract of insurance are alluded to in the following language from State ex rel. Inter-Insurance Auxiliary Company v. Revelle, 165 S.W. 1084, 257 Mo. 529, l.c. 535:

"The essential elements of a contract of insurance are an agreement, oral or written, whereby for a legal consideration the promisor undertakes to indemnify the promisee if he shall suffer a specified loss."

In the case of Robers v. Shawnee Fire Insurance Company of Topeka, Kansas, 111 S.W. 592, 132 Mo. App. 275, l.c. 278, the Kansas City Court of Appeals used the following language in discussing the words "indemnity" and "insurance":

"Indemnity signifies to reimburse, to make good and to compensate for loss or injury, (4 Words and Phrases, p. 3539.) Insurance is defined by Bouvier, 'to be a contract by which one of the parties, called the insurer, binds himself to the other called the insured, to pay him a sum of money, or otherwise indemnify him.'"

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The insurance character of burial associations is evident from the following language found in Section 376.020 RSMo 1949, of Missouri's regular life insurance company law:

"\* \* \*provided, that any association consisting of not more than one thousand five hundred citizens, resident of the state of Missouri, all living within the boundaries of not more than three counties in this state, said counties to be contiguous to each other, organized not for profit and solely for the purpose of assessing each of the members thereof upon the death of a member, the entire amount of said assessment, except ten cents paid by each member, to be given to a beneficiary or beneficiaries named by the deceased member in his or her certificate of membership, said certificate of membership to be issued by such association, shall not be construed to be life insurance company under the laws of this state, \* \* \*."

In 44 C.J.S., Insurance, Sec. 48, p. 494, we find burial insurance referred to in the following language:

"Burial insurance is a contract based on a legal consideration whereby the obligor undertakes to furnish the obligee, or one of the latter's near relatives, at death, a burial reasonably worth a fixed sum."

The foregoing citation disclosing a definition of burial insurance bears remarkable likeness to the following definition found in 1 Joyce on Insurance (2 Ed), p. 87:

"Burial insurance is a contract based upon a legal consideration, whereby the obligor undertakes to furnish the obligee, or one of the latter's near relatives, at death, a burial reasonably worth a fixed sum. It is a valid contract, and constitutes life insurance."

In 1 Couch on Insurance, Section 32, burial insurance is referred to in the following language:

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"Burial or funeral benefit insurance is valid, and being determinable upon the cessation of human life, and dependent upon that contingency, constitutes life insurance."

CONCLUSION

It is the opinion of this office that the Pre-Arranged Burial Agreement described in this opinion, and purportedly issued by the McMikle Funeral Home, East Prairie, or Charleston, Missouri, is a contract of insurance within the meaning of language contained in Sec. 375.310 RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON  
Attorney General

JLO'M:gm