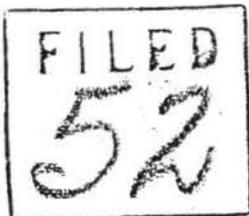


INSURANCE: Described contract proposed to be issued by ABC Ambulance Company not an insurance contract subject to regulatory provisions of Missouri insurance code.

October 23, 1957



Honorable C. Lawrence Leggett
Superintendent of the Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Leggett:

This opinion construes a contract proposed to be issued by ABC Ambulance Company, with a view to determining if the contract contains covenants and agreements which will cause it to be denominated a "contract of insurance," the offering for sale of which would be in violation of Section 375.310 RSMo 1949 providing a penalty for engaging in the insurance business without proper State authorization. In order that no doubt will exist as to the written provisions of the agreement being construed it is here quoted in its entirety:

"ABC AMBULANCE CO.
of Joplin, Mo.

"Contract and Agreement

"ABC Ambulance Company of Joplin, being the first party, and _____ being the second party, have duly signed this contract and agreement that if ambulance service is needed by the second party, while this contract is in force, and that this service shall include members of his family living at his address and whose names appear on this contract shall be rendered service without additional charge within the city limits and a five mile radius of Joplin and that the party of the first part further agrees to pay upon receipt and verification of ambulance service rendered by any other company anywhere outside of Joplin, up to but not more than this contract while this

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contract is in force which will be _____
years from date signed and that any payment
received for service from any company or
any other party shall be returned to the
party of the second part.

"Signed this _____ day of _____ in the year _____.
Amount _____ for period of _____ years.

Signature - First Party

Signature - Second
Party

Address - Second
Party

Members of family
protected by this
contract and agree-
ment are:

_____"

Expressed terms of the above contract are to be augmented
by provisions disclosing that the contract will have a term of
one year with the cost to be five dollars per family.

In State ex rel. Inter-Insurance Auxiliary v. Revelle, 165
S.W. 1084, 257 Mo. 529, l.c. 535, the Supreme Court of Missouri
spoke as follows:

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

The Kansas City Court of Appeals, in Rogers v. Shawnee Fire
Insurance Company of Topeka, Kansas, 111 S.W. 592, 132 Mo. App.
275, l.c. 278, spoke as follows:

"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,

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to pay him a sum of money, or otherwise indemnify him."

To summarize the contract in question, we find the company agreeing with the contract purchaser for a period of one year and for a consideration of five dollars to furnish, on behalf of the purchaser and members of his family, any ambulance service required within the city limits of Joplin and a five mile radius thereof, and to further reimburse the contract holder for such service to the extent of five dollars when such services are rendered by any other person or firm outside the area mentioned. That there is an element of risk in the contract for services to be performed in Joplin and within a five mile radius thereof, and a promise of partial indemnity for loss occasioned when services are rendered outside the area mentioned is not to be disputed.

A rule to be applied in this instance is to be gleaned from the following language found in the case of *Jordan v. Group Health Association* (1939), 71 App. D.C. 38, 107 Fed. 2d 239, 247:

"That an incidental element of risk distribution or assumption may be present should not outweigh all other factors. If attention is focused only on that feature, the line between insurance or indemnity and other types of legal arrangement and economic function becomes faint, if not extinct. This is especially true when the contract is for the sale of goods or services on contingency. But obviously it was not the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk. That view would cause them to engulf practically all contracts, particularly conditional sales and contingent service agreements."

The contract being construed, viewed in its entirety, appears to have as its dominant feature, services to be rendered on a contingency, rather than a comprehensive risk coverage common to insurance regulated by statute. The line of demarcation in this contract between a contingent service agreement and an insurance risk agreement is sufficiently apparent to resolve the question in favor of a contingent service agreement, and the contract is not to be considered a contract of insurance, issuance of which is regulated by Missouri's insurance code.

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CONCLUSION

It is the opinion of this office that the within described contract, proposed to be issued by ABC Ambulance Company, is not a "contract of insurance" and may be offered for sale without such sale being subject to the regulatory provisions of Missouri's insurance code.

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:hw