

INSURANCE: Described contract offered by E. B. Koonce Mortuary, Inc. is a contract of insurance, and offering of the same to the public without meeting licensing requirements of Missouri's insurance code violates Sections 375.300 and 375.310, RSMo 1949.



April 21, 1958

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

Dear Mr. Leggett:

In reply to your recent request, this opinion construes a contract of agreement purportedly offered to the public by E. B. Koonce Mortuary, Inc., a Missouri corporation. The contract is being examined with a view to determining if it is, in point of law, a contract of insurance, the issuance of which is subject to the provisions of Section 375.310, RSMo 1949, providing in part, as follows:

"Any association of individuals, and any corporation transacting in this state any insurance business, without being authorized by the superintendent of the insurance division of this state so to do, or after the authority so to do has been suspended, revoked, or has expired, shall be liable to a penalty of two hundred and fifty dollars for each offense, \* \* \*."

In order that no doubt will exist as to the written provisions of the agreement being construed, it is here quoted in its entirety, with only the names of the second party and his sister named in the agreement being omitted:

"This is not a burial league or insurance

**E. B. KOONCE MORTUARY, INC.**  
Incorporated under the laws of the State of Missouri  
**KOONCE'S FUNERAL PLAN**  
**CONTRACT OF AGREEMENT**

Professional Group

**E.B.KOONCE**  
President and Founder

**MRS. E.B.KOONCE**  
Vice-President-Treasurer

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"This agreement, made this 24th, day of September, 19 56 by and between the E. B. Koonce Mortuary, Inc., a Corporation of the City of St. Louis, party of the first part, and the person whose name appears in the space below, of the City of St. Louis, or St. Louis County, State of Missouri hereinafter known as the party of the second part.

"WITNESSETH:

"The party of the second part purchases of the party of the first part, the following services, articles, and merchandise:

"A casket, grave, (not to exceed \$35.00) removal of the body, shaving, hairdressing or haircutting, preservation of the body, dress or suit, personal service. In Memoriam Book, socks or stockings, underclothing, service of hearse and two (2) Limousines, one (1) Floral, One (1) telegram, funeral to be held at Church, Chapel or home. All of which the party of the first part agrees to deliver and perform in accordance with the terms of the agreement in the City of St. Louis, State of Missouri, or St. Louis County, through the facilities of the E. B. Koonce Mortuary, Inc., 1221 North Grand Blvd., St. Louis, Missouri, at the death of:

Contract Holders	Age	In the Event of Death, Notify	Relationship	Cost of Funeral	Payment
	68		Sister	550.00	1.25
Total Payments					

"Ninety (90) days after date of issue of this Contract, the Party of the first part agrees to furnish Ambulance Service without cost, (when Ambulance is available) to the party of the second part, from Residence in St. Louis, or

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St. Louis County, Missouri, to any Hospital in St. Louis, or St. Louis County.

"In consideration of the above obligations of the party of the first part, the party of the second part agrees to pay to the party of the first part the sum of \$ 550.00 dollars, due and payable in payments of \$ 1.25 on Monday of each and every week.

"In the event the party of the second part fails to make the above payments to the party of the first part within ten (10) days after date due on this contract, then in that event, the party of the first part agrees to allow whatever sums that have been paid on this contract (less any amount of cost for collections) as a credit to apply on the cost of the funeral of the Contract Holder as set out in this agreement.

"In the event the party of the Second part dies before the final payment on this Funeral Contract, and all previous payments have been properly paid on date due, then in that event, the party of the first part agrees to perform the funeral rites of the deceased second party.

"In the event the party of the second part dies outside of the City of St. Louis or St. Louis County, Missouri the party of the First Part agrees to have the body returned to the City above mentioned at their expense, providing that the relatives, heirs or administrators contact the party of the First Part before the services of another funeral director are secured. The distance not to exceed 500 miles.

"In the event the party of the second part dies outside of the City of St. Louis or St. Louis County, Missouri, the party of the First Part will ship at their expense within an area of 500 miles, the above described casket, outside box, (no vault), clothing, underwear and floral.

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"In the event of death of the second party, and remains of the deceased of the above named party are to be shipped to another City, County, or State, the party of the first part will prepare the remains in accordance with this contract, and deliver the remains to railroad station, and will purchase a ticket for the deceased only, for a distance not to exceed 500 miles. The party of the first part will not be responsible for any additional expense under the agreement of the terms of this contract.

"This contract is not assignable by the above named party for whom the funeral services are to be performed. This contract shall be of no force or effect unless upon the date hereon it be delivered and signed by the party of the first part or their legal representative to the party of the second part, and must be signed in the presence of the party of the first part or their legal representative by the party of the second part.

"This Contract Shall Not Be Binding On Either Party Until 90 Days After the Date of Issue.

"IN WITNESS WHEREOF, the parties hereunto have executed this agreement in the presence of each other on the day and year first written above.

E. B. KOONCE MORTUARY, INC.

By /s/ E.B.Koonce First Party

SEAL

And \_\_\_\_\_ Second Party

WITNESS \_\_\_\_\_"

Reverse side of Contract provides:

"E. B. KOONCE MORTUARY, INC.  
Incorporated under the laws of  
the State of Missouri

Contract No. 16879



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Missouri's regular life insurance company law:

"\* \* \* provided, that any association consisting of not more than one thousand five hundred citizens, residents 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, \* \* \*."

At 44 C.J.S., Insurance, Sec. 27, we find the subject of burial benefit treated as follows:

"'Burial benefit' or 'funeral benefit' has been regarded as life insurance."

In the footnote to the texts of C.J.S., just quoted, we are cited to the case of State ex rel. Reece v. Stout, 17 Tenn. App., 65 S.W. (2d) 827, in which case the following language is found at 65 S. W. (2d) 827, l.c. 829:

"Burial or funeral benefit, being determinable upon the cessation of human life, and dependent upon that contingency, constitutes life insurance. Such a contract has, however, been held void as against public policy and in restraint of trade, where, although the purpose of the association was to provide, at their death, a funeral and proper burial for the members, the association was organized on the mutual plan, the members contributing a stipulated sum weekly, and the funeral, certain funeral furnishings, and outfit were to be furnished, by and through a designated undertaker, or official undertaker."

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In the case of Knight v. Finnegan (D.C.Mo.) 74 F. Supp. 900, the Court, in the course of defining life insurance, spoke as follows at 74 F. Supp. 900, l.c. 901:

"Moreover, the elements and requisites of an insurance policy are, among others, 'a risk or contingency insured against and the duration thereof.' 'A promise to pay or indemnify in a fixed or ascertainable amount.'"

Summarizing the essential provisions of the contract of agreement fully described in the forepart of this opinion, we find E. B. Koonce Mortuary, Inc., agreeing to sell to the contract holder designated services, articles and merchandise, to be delivered upon the death of the contract holder. As consideration for such services, articles and merchandise, the contract holder agrees to pay E. B. Koonce Mortuary, Inc., the sum of Five Hundred and Fifty Dollars due and payable in payments of One Dollar and Twenty-Five Cents per week, the aggregate sum being referred to in the agreement as "cost of funeral." In the event of default by the contract holder in making his weekly payments, we find a provision on the reverse side of the agreement providing: "This contract is null and void if payments are one week in arrears." While no provision is found in the agreement for reinstatement after default, we do find that whatever sums have been paid on the agreement at time of default, "less any amount of cost for collections" will be allowed "as a credit to apply on the cost of the funeral of the contract holder." If the agreement is null and void upon default, there is no way for the contract holder or his legal representative after his death to compel E. B. Koonce Mortuary, Inc., to furnish services and merchandise of the value of \$550.00.

In searching this agreement for the "risk" element so essential to a contract of insurance, it may be found in the following provision:

"In the event the party of the Second part dies before the final payment on this Funeral Contract, and all previous payments have been properly paid on date due, then in that event, the party of the first part agrees to perform the funeral rites of the deceased second party."

We do not construe the foregoing quoted provision from the contract to mean anything less than that E. B. Koonce Mortuary, Inc. will furnish a funeral, accompanied by services and merchandise mentioned

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in the contract, of a value of \$550.00. To fully pay out the contract price of the funeral at \$1.25 per week would require approximately eight years. In promising to fulfill the contract at any time before the final payment thereunder, E. B. Koonce Mortuary, Inc. undertakes a "risk" which causes the contract to be one of insurance. The contract price of services and merchandise to be rendered may or may not have any true relation to the amount paid in by the contract holder prior to his death, depending on how near the contract expiration date the contract holder dies. Hence, we have present in the contract the element of "risk" essential to an insurance contract.

#### CONCLUSION

It is the opinion of this office that the within quoted contract of agreement purported to be offered by E. B. Koonce Mortuary, Inc. is a contract of insurance within the meaning of Section 375.310, RSMo 1949, and offering of the same to the public without meeting the requirements of Missouri's laws relating to organization and regulation of insurance companies will cause persons and corporations so offering such contracts to be subject to the penalties prescribed by Section 375.300 and 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

Enclosure  
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