

INSURANCE: Certificate of Credit described in opinion 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.



October 1, 1958

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

Dear Mr. Leggett:

This opinion construes a Certificate of Credit purportedly issued and offered to the general public by The Brauningers, doing an undertaking business in Johnson County, Missouri. It is essential to determine if the Certificate of Credit evidences an agreement which will cause it to be, in legal effect, an insurance contract, the offering and 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. We here quote the language of the Certificate of Credit you submitted with your letter of inquiry:

"Value \$100 Certificate of Credit No. \_\_\_\_\_  
Issued to NAME ADDRESS The Brauningers  
Serving Johnson County Since 1933  
LEETON--WARRENSBURG--KNOB NOSTER

"CERTIFICATE OF CREDIT VALUE, \$100.00

"The value of this Certificate is in the amount of \$100.00 (One Hundred Dollars) to be applied on funeral services and merchandise, so desired by the holder hereof, or by person or persons who are responsible for the disposition and funeral of the holder hereof, at THE BRAUNINGERS, the Funeral Home, Leeton, Warrensburg, Knob Noster, Johnson County, Missouri.

"For this Certificate of Credit, the holder agrees to pay to THE BRAUNINGERS, the amount of 50¢ (fifty cents) per month for a period of Fifteen Years, at which time, this Credit Certificate shall be considered Paid Up in Full, or, so long as the holder shall pay Fifty Cents each month to THE BRAUNINGERS, upon due proof of death at ANY time, this Certificate of Credit shall be honored in Full Amount of One Hundred Dollars, to be applied on funeral services furnished by THE BRAUNINGERS."

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/s/ R. A. Brauninger  
Signed: R.A.Brauninger.

"Each 50¢ Monthly Payment Placed in Trust.  
(Limited Certificate)"

In addition to the Certificate of Credit quoted above, you have furnished this office with a newspaper advertisement purportedly referring to the Certificate of Credit and we quote it here in full.

"2000 MORE HOLDERS WANTED      It makes no difference where YOU live--If YOU are 50 years of age or older--YOU may hold a Burial Certificate for 50¢ a month which DOES pay up and IS strictly in force after the first payment. Contact THE BRAUNINGERS Phone 456 LEETON WARRENSBURG KNOB NOSTER Serving Johnson County and Surrounding Area Since 1933."

Section 375.300, RSMo 1949, provides:

"Any person or persons who in this state shall act as agent or solicitor for any individual, association of individuals or corporation engaged in the transaction of insurance business, without such person or persons first having obtained from the superintendent of the insurance division of this state the certificate authorizing him to act as such agent or solicitor, as required by section 375.010, or who shall act as agent or solicitor for any individual, association of individuals or corporation engaged in insurance business, before such individual, association of individuals or corporation shall have been duly authorized and licensed by the superintendent of the insurance division of this state to transact business in this state, or after such license has been suspended, revoked, or has expired, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten nor more than one hundred dollars for each offense, or imprisoned in the county or city jail for not less than ten days nor more than six months, or by both such fine and imprisonment."

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Section 375.310, RSMo 1949, provides 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 *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 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 *Rogers 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 to him a sum of money, or otherwise indemnify him.'"

In the case of *State ex inf. v. Black*, 145 S.W. (2d) 406, 347 Mo. 19, l.c. 24, the insurance character of burial associations was alluded to in the following language:

"The insurance character of this business is recognized by the provision of the act exempting such associations from the general insurance laws."

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The insurance character of burial associations is also attested by 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, 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, 1.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.'"

Under the express terms of the Certificate of Credit heretofore quoted, The Brauningers, by R. A. Braunger, grant a fully paid-up Certificate of Credit in the amount of \$100.00 to any holder thereof who agrees to pay and does pay fifty cents per month for fifteen years, such credit to be applied on funeral services and merchandise for the certificate holder to be furnished by The Brauningers. To such point the certificate is nothing more or less than a credit arrangement, but the essential "risk" element, so necessary to an insurance contract, comes into existence under that provision of the Certificate of Credit which stipulates that the Certificate of Credit is to be considered "Paid Up in Full" upon due proof of death of the certificate holder at "any" time. This simply means that funeral services and merchandise of the value of \$100.00 are promised for a consideration ranging from fifty cents to one hundred dollars, depending on whether the certificate holder should die before the certificate becomes fully paid-up by normal monthly payments over approximately fifteen years. No language in the Certificate of Credit requires that the certificate holder's estate or any other person meet the payments necessary to equal the value of the services and merchandise to be furnished in the event of the certificate holder's death prior to the normal life of the Certificate of Credit. The advertisement relating to the Certificate of Credit, and quoted above, further discloses the nature of the Certificate of Credit to be burial insurance.

#### CONCLUSION

It is the opinion of this office that the Certificate of Credit fully described in the foregoing opinion is a contract of insurance within the meaning of the language contained in Section 375.310, RSMo 1949, and offering of the same to the public without meeting requirements of Missouri's laws relating to organization and regulation of insurance companies will cause persons so offering such contracts to be subject to the penalties prescribed by Sections 375.300 and 375.310, RSMo 1949.

Honorable C. Lawrence Leggett

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

Yours very truly,

John M. Dalton  
Attorney General

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