

INSURANCE: Contract Number 1515 negotiated by Duncan Funeral Homes is not on its face an insurance contract, but negotiating of the same in the light of language found in the letter of Duncan Funeral Homes, dated May 19, 1961, causes Contract Number 1515 to evidence an insurance contract, offered in violation of Secs. 375.300 and 375.310, RSMo 1959.

December 22, 1961



Honorable William E. Gladden
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Mr. Gladden:

This opinion construes Contract No. 1515, dated May 9, 1961, between Duncan Funeral Homes and Firman Goforth, as the same is affected by the letter of Joe R. Duncan, dated May 19, 1961, addressed to Firman Goforth. The contract form and letter is reviewed with a view to determining if the same, in point of law, constitute the negotiation of an insurance contract in violation of Section 375.310, RSMo 1959, 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, * * *."

We further view the contract and letter referred to in the preceding paragraph to determine if those who negotiate such agreement as agents are in violation of Section 375.300, RSMo 1959, reading as follows:

"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

Honorable William E. Gladden

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 individuals, 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."

In order that no doubt will be entertained as to the complete provisions of Contract No. 1515, and the language found in the letter of May 19, 1961, addressed to Firman Goforth in relation to such contract, we here set forth the full text of such instruments:

Contract No. 1515 provides as follows:

"Number 1515 Amount \$ 400.00

PRE-ARRANGED FUNERAL CONTRACT

With

DUNCAN FUNERAL HOMES

Mountain View, Missouri

Birch Tree Winona Eminence Summerville

I hereby request the Duncan Funeral Home to take charge of the remains at the time of death, furnish their complete funeral services and conduct the funeral, all in accordance with the pre-arranged contract hereinafter set out, in the amount as herein stated.

"In consideration of the hereinafter set out contract, I hereby agree to pay the sum of \$ 400.00 in equal payments of \$ 9.00 per quarter hereafter until said sum is fully paid. Should the undersigned fail to make quarterly payments as set

Honorable William E. Gladden

out above, on the date specified, said agreement shall not become null and void by reason thereof and the undersigned shall be entitled to paid up funeral benefits in a sum equal to the full amount of all payments which have been paid, in merchandise only, through the Duncan Funeral Home.

"In consideration of the payment of \$ 9.00 and the payment of \$ 9.00 each quarter hereafter, the Duncan Funeral Home agrees in the event of the death of the Parties Listed below and in the event of full compliance with the terms of this contract, and provided the undersigned has paid the amount due provided for herein, to take charge of and conduct the funeral of Parties Listed, to furnish a Superior Quality Casket and their complete Funeral Services to the value herein stated."

NAME	Relation to Applicant	Age	Quarterly Payment	Amount of Contract
Firman Goforth	-----	80	\$ 9.00	\$ 400.00

"Free ambulance service will be furnished applicant within a radius of forty miles of the Duncan Funeral Home nearest you, not to exceed eighty miles in any twelve month period.

"In the event that the deceased has died a distance to excess of fifty miles of the nearest Duncan Funeral Home or that burial is to take place at a distance of more than fifty miles, a reasonable charge shall be made for travel in excess of fifty miles.

"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 amount due under the contract.

"In the event legislation is passed forbidding contracts of pre-arrangement of funeral services, the total amount that has been paid by the undersigned will be used as a credit toward a funeral service, only when said services are purchased from the Duncan Funeral Home. In no event will payments be returned in cash.

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

Honorable William E. Gladden

"The undersigned hereby requests his or her next of kin, heirs, administrators, executors, or assign to immediately notify the Duncan Funeral Home, upon his or her death, in order that the Duncan Funeral Home may fulfill this mutual contract. Failure to so notify the Duncan Funeral Home renders re-arranged contract null and void."

"Dated this 9th day of May, 1961.

s/ Firman Goforth
Applicant's Name as it appears on Application

DUNCAN FUNERAL HOME

By s/ Joe R. Duncan

Witness: s/ John R. Duncan"

**SUMMARY OF BY-LAWS AND REGULATIONS OF CONTRACT WITH
DUNCAN FUNERAL HOMES**

"When the address of a member is changed, it shall be the duty of such member to at once notify the Duncan Funeral Home, of such change.

"The family of the deceased shall have the right to select the casket and funeral service to the amount designated in this certificate; and if they choose to do so, they may select a casket, service and, or, merchandise of greater value by arranging for payment in the difference. The complete funeral furnished under this contract shall be equal to or greater in value than that furnished for the amount provided in this contract, by other funeral homes complete funeral service and merchandise.

"Immediate notice of the death of the member named herein must be given to the Duncan Funeral Home, so it may take immediate charge and care of the remains and prepare same for funeral. The Duncan Funeral Home will not be liable for any expense incurred by the family of the deceased member, nor by any other person, nor will it be responsible to the family of the deceased member, nor to any other Undertaker for any merchandise or service rendered, unless first specifically authorized in writing by the Duncan Funeral Home."

Honorable William E. Gladden

CONTRACT No. 1515

AMOUNT \$ 400.00

DUNCAN FUNERAL
HOMES

Pre-Arranged Funeral
Contract with

Firman Goforth

Summersville, Missouri

Failure to notify Duncan
Funeral Home immediately in
event of death voids this
contract

Make payments by mail or
at our office in Mountain
View, Missouri

WE HAVE NO
COLLECTORS

The letter of Joe R. Duncan, dated May 19, 1961 directed to
Mr. Firman Goforth, reads as follows:

"Mr. Firman Goforth
Summersville
Missouri

Dear Firman:

Our pre-arranged funeral contract states that when you take
our policy, you will pay so much a quarter until the sum is
fully paid. Another thing that our policy has that cannot
be written in, because of the Missouri Statutes, is should
death occur, the contract is fully paid and you will never
pay another penny on the person that has passed away.

Another Funeral Home that has a policy similar to ours has
spread the rumor that should one of our members pass away,
the remaining members of the family will have to finish out
the unpaid balance. If anyone would only stop to think,
they would know this is not true. All thats necessary is

There is no need of anyone
being in doubt as to the High
Quality Funeral Merchandise
that is furnished, same is on
display at Duncan Funeral Homes,
at all times for inspection.
The public is cordially invited.

Do not permit anyone to get
you to drop this Contract, the
only interest he has in you or
your family is the amount of
collection fee, or commission
which he will make if he can
induce you to drop your Funeral
Contract and take one in his
Company.

Honorable William E. Gladden

to ask some of those that have had deaths while a policy holder with us. Just ask the Lindsey, Brawley, Honeycutt, or Counts families. They will be glad to tell you how much they received after only one quarterly payment being made.

We have been Funeral Directors in this area for 53 years. You know we could not have stayed in business for that long a period without being honest and fair in all our dealings.

With kindest personal regards, I remain

Most sincerely,

s/ Joe R. Duncan

Joe R. Duncan."

Missouri statutes do not define the word "insurance". In State ex rel. Inter-Insurance Auxiliary v. Revelle, 165 S. W. 1084, 257 Mo. 529, L. o. 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."

The insurance character of burial associations is attested by the following language found in Section 376.020, RSMo 1959 of Missouri's regular life insurance 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 members, 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

Honorable William E. Gladden

association, shall not be construed to be a 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."

Of particular interest in connection with the contract here being considered we submit the following text from Couch on Insurance 2d, Sec. 1:63:

"A contract of industrial or burial insurance must be distinguished from a contract with an undertaker for the advance purchase, whether or not on an installment plan, of funeral services to be rendered the purchaser upon his death. Thus, a contract to furnish funeral services and burial clothing will not be held to constitute life insurance from the fact alone that the performance of the contract is contingent upon the death of the insured, in the absence of evidence to show that the amount payable by the purchaser is less than the value of the funeral or merchandise contracted for, or that there is any element of risk involved on the part of either the purchaser or the seller, at least where the contract does not purport upon its face to be one of life insurance. Except as such a contract may be specifically declared life insurance by statute, the issuance by the proprietor of a funeral home of contracts which, by their terms, entitle the holders and their families or dependents to complete funeral services at cost plus 10 per cent, but contain no provision for periodical assessments or dues or for the forfeiture of payments, is merely a contract for the sale of goods and services rather than a contract of insurance and is therefore not subject to a statute regulating the business of insurance."
(Underscoring supplied.)

The underscored language in the preceding quotation from Couch on Insurance 2d, Sec. 1:63, reflects a rule by which Contract No. 1515, here being considered, will be judged.

Summarizing the essential provisions of Contract No. 1515, dated May 9, 1961, we find that the maximum value of funeral

Honorable William E. Gladden

benefits contracted to be furnished Firman Goforth by Duncan Funeral Homes is \$400.00. Furnishing of the benefits is contingent upon the death of Firman Goforth. Payment of the \$400.00 is promised in quarterly installments of \$9.00 each. Failure to make one or more quarterly installment payments is treated in the following language in the contract:

"Should the undersigned fail to make quarterly payments as set out above, on the date specified, said agreement shall not become null and void by reason thereof and the undersigned shall be entitled to paid up funeral benefits in a sum equal to the full amount of all payments which have been paid, in merchandise only, through the Duncan Funeral Home."

Under the provision of the contract just quoted above, failure to make all installment payments under the contract merely limits the benefits to a receipt of merchandise only, in an amount equal in value to the payments made. This will result in the contracting party getting in merchandise only that which he has paid for.

Under the third paragraph of Contract No. 1515, complete funeral services are to be rendered only in the event the entire amount of \$400.00 has been paid. This provision also guards against giving to the contracting party funeral services at a stated price of \$400.00 for any amount less than \$400.00. One additional provision found on the face of Contract No. 1515 discloses an absence of a risk element in the contract by providing 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 amount due under the contract."
(Underscoring supplied.)

Again, in the provision just quoted from Contract No. 1515, we find that Duncan Funeral Home is not promising to render services or merchandise for less than the full \$400.00 contract price even though someone other than the original contracting party is assuming the payments required by the contract.

Honorable William E. Gladden

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 contract being construed, Contract No. 1515, the contract holder, as well as those members of his immediate family who would choose to have such benefits inure to them, must meet the full contract price of \$400.00 before Duncan Funeral Homes is obligated to render full services under the contract. No "risk" whatever is being insured by Duncan Funeral Homes if it requires the contract holder, or others who would stand in his position, to comply with the patent provisions of the contract. The funeral home is only contracting to furnish services or merchandise in an amount equal to that which the contract holder is required to pay in money.

We now consider the letter of Duncan Funeral Homes, dated May 19, 1961, addressed to the contract holder of Contract No. 1515, quoted in the forepart of this opinion. The first paragraph of such letter provides as follows:

"Our pre-arranged funeral contract states that when you take our policy, you will pay so much a quarter until the sum is fully paid. Another thing that our policy has that cannot be written in, because of the Missouri Statutes, is should death occur, the contract is fully paid and you will never pay another penny on the person that has passed away."

As we view the letter of Duncan Funeral Homes, dated May 19, 1961, and particularly the first paragraph thereof, above quoted, in the light of its relationship to Contract No. 1515, it constitutes an overt act on the part of Duncan Funeral Homes placing a "risk" element into Contract No. 1515 which will cause such contract to be carried out as an insurance contract. By agreeing with the contract holder to furnish services in the event of death of the contract holder without requiring full payment of the contract price of \$400.00 stated in Contract No. 1515, Duncan Funeral Homes is assuming an insurable "risk" and promising to

Honorable William E. Gladden

pay, in services or merchandise of agreed money value, that which may or may not bear any true relationship to the installment payments made on the contract at the time of death of the contract holder.

The request for this opinion discloses that each contract form corresponding to Contract No. 1515 is accompanied by a letter corresponding to the letter of May 19, 1961, addressed to Firman Goforth. In view of such fact, contract No. 1515 and the letter of May 19, 1961 addressed to the contract holder by Duncan Funeral Homes evidence the true agreement between the contracting parties, and together constitute the contract.

In State v. Griffin, Mo. App., 246 S. W. 2d 396, 1.c. 398, we find the following principle of contract law stated:

"It is a well recognized rule of law that a contract need not be in a single document but may be made up of several separate instruments or documents."

CONCLUSION

It is the opinion of this office that Contract No. 1515 negotiated by Duncan Funeral Homes is not on its face an insurance policy, but the letter of May 19, 1961, directed by Duncan Funeral Homes in relation to Contract No. 1515, causes the contract to be one of insurance within the meaning of Section 375.310, RSMo. 1959, 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 Sections 375.300 and 375.310, RSMo 1959.

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

Yours very truly,

Thomas F. Eagleton
Attorney General