

**INSURANCE:** Membership Certificate No. 7799 negotiated by Jimmy Osburn Burial Service Association of Pemiscot County, Missouri, evidences an insurance contract and persons negotiating such agreements without being duly licensed by the State Division of Insurance are amenable to penalties prescribed in Secs. 375.300 and 375.310, RSMo. 1959.

OPINION NO. 135

April 5, 1962



Honorable Jack L. Clay  
Superintendent, Division of  
Insurance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Clay:

This opinion is in reply to your inquiry reading as follows:

"Attached hereto is a membership certificate and a receipt wherein I respectfully request an opinion from your office as to whether this constitutes an insurance contract and, if so, does it come under the jurisdiction of this office."

In order that no doubt will be entertained as to the complete provisions of Membership Certificate No. 7799 issued by Jimmy Osburn Burial Service Association we here set forth the full text of Membership Certificate No. 7799:

"Membership Certificate

WHEREAS, the person named herein has made application for membership in the undersigned Association, and has in all respects complied with the By-Laws and Constitution thereof, as expressed in its Articles of Association.

THEREFORE, it is hereby certified that the person named below is a member of said Association and is entitled to be furnished by said Association a

funeral in the amount stated herein, as follows:

<u>Name</u>	<u>Age</u>	<u>Amount of Funeral</u>	<u>Monthly Dues</u>	<u>Quarterly Dues</u>
Maggie Farris	78	\$100.00		\$2.00

Membership shall be suspended on non-payment of dues more than 15 days delinquent, but shall be deemed reinstated on payment of all delinquent dues, if paid by or for such member while in good health. And 80 percent of all dues paid by or for a member who is suspended at time of death shall be applied on a funeral of such suspended member when furnished by the Manager-Treasurer of said Association.

And when any member has paid dues aggregating the amount of the funeral stated in his or her Certificate, plus 20 percent, such member shall be henceforth relieved of further payment of dues.

The Manager-Treasurer shall furnish all graves, burial supplies and Funeral Services for deceased members, except graves and Funeral Services when the interment occurs more than fifty miles from Wardell, Missouri, and in such cases, only burial supplies will be furnished to the amount named in this Certificate, by the Manager-Treasurer.

IN WITNESS WHEREOF, the Jimmy Osburn Burial Service Association of Pemiscot County, Missouri, has caused this Certificate to be signed by its Manager-Treasurer and counter-signed by its Secretary, this the 13th day of December, 1955, at Wardell, Missouri.

ATTEST:

s/ Mrs. Jimmy Osburn  
Secretary

s/Jimmy Osburn  
Manager-Treasurer "

(Shown on reverse side of the above Membership Certificate is the following language:)

"Certificate No. 7799  
JIMMY OSBURN  
BURIAL SERVICE ASSOCIATION  
of Pemiscot County, Missouri  
WARDELL, MISSOURI

Issued to the Person or Persons  
Named Herein

Next Quarterly or Monthly Dues of  
\$2.00 is due on the 1st day of  
April, 1956.

In Case of Death  
IMMEDIATELY NOTIFY JIMMY OSBURN, Manager-Treasurer  
Wardell, Missouri Phone 2471."

We review Membership Certificate No. 7799, quoted above, with a view to determining if the same, in point of law, constitutes 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 Membership Certificate No. 7799 to determine if those who negotiate such a membership certificate 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 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."

Missouri statutes do not define the word "insurance". In State ex rel. Inter-Insurance Auxiliary v. Revelle, 165 S.W. 1084, 257 Mo. 529, 1.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."

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 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 a life insurance company under the laws of this state, \* \* \*."

At 44 C.J.S., Insurance, Section 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, or 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 provisions 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.

Membership Certificate No. 7799, dated December 13, 1955, evidences an agreement whereby Jimmy Osburn Burial Service Association has agreed to furnish Maggie Farris a funeral valued at \$100.00. The monetary consideration moving to Jimmy Osburn Burial Service Association to support the contract is shown by the obligation placed upon Maggie Farris to pay quarterly dues of \$2.00. When Maggie Farris has paid dues totaling \$120.00 she is relieved of further payment of dues. Membership under Membership Certificate No. 7799 becomes suspended when payment of dues is delinquent more than fifteen days, but reinstatement is effected by payment of delinquent dues.

In searching for the "risk" element which is necessary to make Membership Certificate No. 7799 take on the character of an insurance contract we find such "risk" element by considering the entire language of the Certificate in the light of the accepted purpose of the agreement. The agreement is to furnish a funeral having a value of \$100.00 for a named person so long as that person is not delinquent in payment of dues under the agreement. Such agreement is not conditioned upon the holder of the Certificate having paid dues equal to \$120.00, for that condition relates only to a paid-up Certificate. In the absence of any provision in the Certificate stipulating that the member, or someone in his behalf, must furnish payment of dues equaling the stated amount of the funeral to be furnished, it must be reasonably concluded that should the holder of Membership Certificate No. 7799 die before payment of quarterly dues in an amount totaling \$100.00, the Jimmy Osburn Burial Service Association is obligated under the Certificate to furnish a funeral of a value of \$100.00, and in the light of such facts we discover the "risk" element in Membership Certificate No. 7799. In such an instance we find that Jimmy Osburn Burial Service Association has agreed to furnish a funeral in the stated amount of \$100.00 for a sum of dues payments which may or may not bear any true or correct relationship, in money value, to the agreed price of the funeral.

We go a step farther and demonstrate how, under Membership Certificate No. 7799, the "risk" element becomes even more evident. Under Membership Certificate No. 7799, the value of the funeral is set at \$100.00, with quarterly dues payable by Maggie Farris in the amount of \$2.00. With Maggie Farris' age

being seventy-eight years at the inception of her membership, the timely payment of quarterly dues will not allow such payments to total \$100.00 before expiration of at least twelve years, and the Maggie Farris would then have reached the age of ninety years.

We cannot conclude otherwise than that Membership Certificate No. 7799, described above, is an insurance contract.

Conclusion

It is the opinion of this office that Membership Certificate No. 7799, dated December 13, 1955, issued to Maggie Farris by Jimmy Osburn Burial Service Association of Pemiscot County, Missouri is a contract 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

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