

OPINION REQUEST NO. 162 ANSWERED BY LETTER

May 10, 1963

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



Dear Mr. Clay:

This letter of advice is written in lieu of a formal opinion requested in your inquiry of April 1, 1963, regarding the Brotherhood of Railroad Trainmen.

The certificate submitted with your inquiry is described on its face as an "Occupational Accident Insurance with Benevolent Benefits," issued to a member of the Brotherhood of Railroad Trainmen, Insurance Department.

In answer to your first question as to whether the certificate is an insurance contract, we answer by saying that the certificate is replete with language on its face which calls for an affirmative answer to such question. Since the certificate refers to the benefits accorded as "accident insurance," describes the second party to the contract as the "insured," contains thirteen standard provisions, and other provisions, which are common to regular insurance policies providing similar benefits, no time will be spent in discussing specific provisions of the certificate.

As late as 1931, the Supreme Court of Missouri in the case of Clark v. Grand Lodge of the Brotherhood of Railroad Trainmen, 328 No. 1084, l.c. 1096, 43 SW2d 404, spoke as follows in relation to the Brotherhood of Railroad Trainmen:

"But the defendant has also established and conducts an insurance branch of its business for the benefit of and limited

to the members of the order. That defendant is doing a large insurance business in this and other states is unquestioned. It collects and disburses large sums of money in connection with its insurance business. It is doubtless true that thousands of railroad trainmen carry no other insurance than certificates or policies issued by this association. The certificates of insurance issued are essentially insurance contracts. Thereby the defendant, in consideration of the payment of a premium in the form of monthly dues, undertakes and agrees to pay the person named as beneficiary a certain sum of money on death or disability of the insured."

Attention is now turned to your second inquiry seeking an answer to whether the certificate in question is exempt from the provisions of Chapter 378 RSMo 1959, Missouri's statutes having particular applicability to fraternal benefit societies. Section 378.120 RSMo 1959, provides in part, as follows:

"1. Nothing contained in this Chapter shall be so construed as to affect or apply to grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges, or to

(1) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business; and the ladies societies or ladies auxiliaries to such orders, societies or associations; * * *."
(Underscoring supplied)

Attention is directed to the underscored portion of Section 378.120 RSMo 1959, quoted above and we compare such language with that found and underscored from Clark v. Grand Lodge of the Brotherhood of Railroad Trainmen, 328

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Mo. 1084, l.c. 1097, 1098, as follows:

"Section 6021, Revised Statutes 1929, also a part of said Article 13, governing and imposing certain requirements on fraternal benefit societies, provides that 'nothing contained in this article shall be construed to affect or apply to . . . societies which limit their membership to any one hazardous occupation.' * * *. The defendant association clearly comes within the exemption provisions of this statute." (Underscoring supplied)

If the present constitution or by-laws of the Brotherhood of Railroad Trainmen, neither of which has been made available to this office, alter the factual situation existing at the time of the ruling in Clark v. Grand Lodge of the Brotherhood of Railroad Trainmen, cited supra, such fact might cause the conclusion in this letter of advice to be altered.

In light of the court decision cited, as well as Section 378.120 RSMo 1959, you are advised that the Brotherhood of Railroad Trainmen is exempt from the regulatory provisions of Chapter 378 RSMo 1959.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

By _____
Julian L. O'Malley
Assistant Attorney General

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