

BURIAL ASSOCIATIONS: Legislature may enact law prohibiting payment of death benefits in anything other than cash under police power.

March 9, 1937.

3-9

FILED
48

Honorable Edgar J. Keating
Member Missouri House of Representatives
Jackson County, Sixth District
Jefferson City, Missouri

Dear Mr. Keating:

This is to acknowledge your letter dated March 4, 1937, as follows:

"I have introduced House Bill 271, a copy of which is attached hereto and a question of constitutionality has arisen. It is claimed that the bill is unconstitutional as depriving persons of the right to contract for burial supplies and reference is made to the decision in 182 Atlantic Reporter 808.

"I would like to have an opinion on the constitutionality before Tuesday night of next week as the matter comes up before the committee then for a hearing.

"I would also like to have some representative from the Attorney-General's office present at the committee hearing to relate to the committee the facts concerning the recent Burial Association investigation. I will appreciate it if you will get this data as soon as possible."

House Bill No. 271 relates to Burial Associations and repeals Sections 5014 and 5017, R. S. Mo. 1929, and enacts in lieu thereof two new sections. The proposed new section, 5014,

is practically the same as Section 5014 found in the 1929 laws. The only change between the proposed new statute and the statute now in the 1929 revision being that the following words are deleted from the new statute, namely:

"Such association when formed shall be exempt from the provisions of the general insurance laws of this state, to-wit: Chapter 37, R. S. 1929:"

Section 5017, found in House Bill No. 271, is the same as Section 5017, R. S. Mo. 1929, with the exception that the following words are found in the 1929 statute, namely:

"not contracted to be paid in a specified manner,"

and

"except by contract in writing signed by the member in person,"

Thus, the purpose of House Bill No. 271 is to delete from Sections 5014 and 5017 certain words now found in the 1929 statutes.

You request our opinion on the constitutionality of House Bill No. 271 as to whether such would deprive a person of the right "to contract for burial supplies."

As heretofore pointed out, present Section 5017, R. S. Mo. 1929, provides that the association shall pay benefits in currency of the United States, but makes the exception that a member may contract with the association to be paid in a specified manner, which would be authority for the association to pay in the manner specified by the member. House Bill 271 is now taking away from the association that right, so that if House Bill 271 is enacted, then the association cannot pay benefits other than as provided by House Bill 271.

As we read House Bill No. 271, there is nothing found therein that relates or interferes with the right of contract. Burial Associations are creatures of statute and the Legislature permits such to be formed. The Legislature could forbid burial associations altogether. The Legislature has provided that burial associations may do business if and

when certain provisions of the statute are complied with. The Legislature has also defined burial associations' powers, rights and duties. Thus, if the Legislature now provides that the association can pay benefits only in a particular manner, to-wit: in currency of the United States, such a provision would not impair the right of contract. The limitation placed upon a burial association as to the payment of benefits is a matter properly for the Legislature to determine, because such is an exercise of the police power of the state.

While Article II, Section 15, of the Constitution of Missouri, provides:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly."

yet, said provision does not render a law unconstitutional if passed by virtue of the police power of the state. The liberty of contract is subject to regulation within the police power. *Powell v. Union Pacific Railway Co.*, 164 S. W. 628, 255 Mo. 420. And the right to contract is subject to reasonable limitations as the public interest and safety may demand. *State v. Cantwell*, 179 Mo. 245. Statutes passed by the Legislature, fixing the rate of interest and declaring a higher rate usurious, have been held constitutional. *Kreibohm v. Yancey*, 154 Mo. 67, 83. Acts of the Legislature giving a lien to attorneys have been held constitutional and such are not objectional as destroying a person's right to contract. *O'Connor v. St. Louis Transit Co.*, 198 Mo. 622. Statutes enacted by the Legislature declaring suicide provisions in a life insurance policy to be no defense in a suit, were held constitutional and such did not abridge the freedom of contract because the state could prescribe terms on which corporations may be organized and empowered to do business and also impose upon them the methods of doing business and the conditions upon which such may do business. *Andrus v. Business Men's Accident Association of America*, 223 S. W. 70, 283 Mo. 442. We believe that this case is analogous to the question presented by your inquiry and is decisive of the constitutionality of

House Bill No. 271, when it is borne in mind that House Bill No. 271 relates to chartered corporations doing a burial association business and that the Legislature under its police power can regulate such associations and impose conditions and limitations upon their methods of doing business.

In *Andrus v. Business Men's Accident Association of America*, supra, the question presented was whether the "suicide section," found in Section 6945, R. S. 1909, was constitutional. The court at page 72 said:

"Appellant attacks the constitutionality of section 6945, R. S. 1909, which declares suicide shall not be a defense in suits upon policies of life insurance, and asks this court to examine that statute and the reasons advanced for its alleged conflict with certain provisions of the Constitution of the state of Missouri, as mentioned in the answer. The argument is that it is unconstitutional, because it abridges the right of contract; the constitutional guaranty of the right to liberty includes the right to make such contracts as the individual sees fit. If the argument of appellant was sound as applied to individuals, it would not necessarily apply to corporations, which are creatures of the statute. This court has said in the case of *Julian v. Kansas City Star*, 209 Mo, loc. cit. 66, 107 S. W. 499:

"The Legislature, in dealing with artificial creatures of the law, may, in certain particulars, make them a class to themselves, and impose conditions upon them not imposed on individuals."

"And further (209 Mo. on page 67, 107 S. W. 499):

"The state, in issuing the charter, may impose its own terms, and, when accepted, the corporation is bound by the terms."

"The state, in prescribing terms and conditions upon which a corporation may be organized and may be empowered to transact business, merely exercises the ordinary power vested in the sovereign state. It could forbid accident insurance companies from doing business in Missouri altogether, which it would be powerless to do in regard to natural persons. It can limit the activities of a corporation, and prescribe the manner and conditions under which it may transact business, in a way that could not be applied to individuals. This has been determined so often that argument in support of the distinction between artificial and natural persons is unnecessary. *N. W. Life Ins. Co. v. Riggs*, 203 U. S. 243, loc. cit. 354, 27 Sup. Ct. 126, 51 L. Ed. 168, 7 Ann. Cas. 1104; *Applegate v. Travelers' Ins. Co.*, 153 Mo. App. loc. cit. 82, 83, 132 S. W. 2; *Houston v. Pulitzer Pub. Co.*, 249 Mo. loc. cit. 338, 155 S. W. 1068.

"Appellant argues at length that the statute, by declaring suicide to be no defense to an action on an insurance policy, places a premium on suicide and is inimical to public welfare and to public morals. In that argument the appellant merely attacks the propriety and the policy of the statute, a consideration which does not concern this court. It is within the discretion of the Legislature to determine the propriety of an enactment and decide whether it may have a beneficial effect upon the subject to which it applies, and that determination it not to be questioned by this court in determining the validity of the statute."

Your letter refers to a decision of the court found in 182 Atl. Rep. 808. The name of said case is *Prata Undertaking Company v. State Board of Embalming and Directing*, and

is a decision of the Supreme Court of Rhode Island. We have read said case and are of the opinion that it is not in point or analogous to the question under consideration. The decision in that case was based upon a statute giving the State Board of Embalming the right to revoke an undertaker's license if such undertaker participated in benefits derived from the activities of burial associations. The Legislature enacted a law which gave the Embalming Board of the State of Rhode Island the right to revoke the license of any licensed undertaker who participated in any scheme or plan wherein a burial association did not give freedom of choice as to the "type or style of funeral or the type or style or price of equipment used in connection with the funeral or the freedom of choice as to what funeral director shall be employed." The court merely held that the above provision was not grounds for revocation of license because an undertaker could contract with any person he wished. The Rhode Island Legislature did not make it unlawful for the undertaker to contract with individuals as to the type and style of funeral, but only provided that if the undertaker participated in the plan or scheme that such participation was grounds for the revocation of his license.

House Bill 271 simply regulates the burial associations and if a burial association does not desire to be regulated it does not have to be a burial association. And if a person knows that the burial association cannot pay benefits other than in currency of the United States, then the person does not have to be a member of the burial association. Thus, the regulating of burial associations is an exercise of the police power of the state, and the provision that benefits must be paid in currency of the United States would be a valid exercise of the police power, and therefore constitutional.

From the above it is our opinion that House Bill 271 does not deprive persons of the right to contract and is constitutional. We express no opinion as to whether contracts entered into with burial associations for the paying of benefits in a manner specified other than in currency of the United States and entered into prior to the enactment of House Bill No. 271, would be impaired or done away with. We are writing this opinion, as to the validity of House Bill No. 271, by assuming that such is now a law.

Yours very truly,

APPROVED:

James L. HornBostel
Assistant Attorney-General

J. E. TAYLOR

(Attorney General)