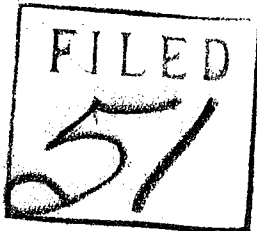


INSURANCE:  
BURIAL INSURANCE:

Contract No. 7814 of Leland Carter Burial Association of Mammoth Spring, Arkansas, dated May 3, 1950, is an insurance contract, and offering of the same to the public without complying with insurance laws of Missouri is a violation of Sections 375.300 and 375.310 RSMo 1949.



March 9, 1955

Honorable Robert L. Lamar  
Prosecuting Attorney  
Texas County  
Houston, Missouri

Dear Mr. Lamar:

The following opinion is rendered in reply to your request touching Contract No. 7814, issued by Leland Carter Burial Association of Mammoth Spring, Arkansas, to Clarence W. Sanders of Alton, Missouri, and bearing date of May 3, 1950. The issue to be determined in this opinion is whether Contract No. 7814 is a contract of insurance, the sale of which is prohibited unless compliance is had with the insurance code of Missouri. Investigation discloses that Leland Carter Burial Association of Mammoth Spring, Arkansas, is not licensed to conduct an insurance business in Missouri.

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,

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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."

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 Company 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:

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

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,

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and outfit were to be furnished, by and through a designated undertaker, or official undertaker."

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.'"

Contract No. 7814 is quoted in its entirety as follows:

"LELAND CARTER BURIAL ASSOCIATION

MAMMOTH SPRING, ARKANSAS

CHARTERED UNDER THE LAWS OF THE STATE OF ARKANSAS

CONTRACT  
NO. 7814

Family Group Burial Certificate

Having paid the required membership fees, and having designated and elected to take a Burial Benefit, and further qualified by promising to be loyal to said Association and governed by its By-Laws is entitled to this Certificate of membership in the Leland Carter Burial Association of Mammoth Spring, Arkansas, and to all the benefits of the Association as set forth in the By-Laws so long as he, she or they shall remain a member thereof. This is to certify that the following members have qualified for membership:

SCHEDULE

Name of Member	Age	Class	Amount of Assessment	Amount of Benefit
Sanders, Clarence W.	53	A	\$.75	\$300.00
Sanders, Evelyn	52	A	.75	300.00
Sanders, Lewis	32	B	.50	200.00
Sanders, Dorothy	30	B	.50	200.00
Sanders, Lester	28	B	.50	200.00
Sanders, Elean	26	B	.50	200.00
Sanders, Bernice	25	B	.50	200.00
Sanders, Leman	23	B	.50	200.00
Sanders, Mary Ann	18	B	.50	200.00

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Sanders, Clinton	16	B	.50	200.00
Sanders, Betty <u>W</u> ay	14	B	.50	200.00
Sanders, Shirley Ann	10	B	.50	200.00
<hr/>				
Total			6.50	

In witness whereof, the signature of the Secretary-Treasurer is hereunto affixed at Mammoth Spring, Arkansas, this the ...3rd.... day of ...May..... 194.50..

..Leland Carter.....  
Secretary-Treasurer.

BY - LAWS AND REGULATIONS OF

Leland Carter Burial Association

MAMMOTH SPRING, FULTON COUNTY, ARKANSAS

This is a voluntary mutual benevolent association, formed for the purpose of providing proper burial for the members hereof by furnishing funeral services and supplies at a minimum cost to the members and in keeping with proper standards in accordance with the certificate of membership held by said members and the by-laws of this Association. This Association with efficient management, its funds shall be used only for the payment of cost of operation and funeral services and supplies and no profit from the operation of the Association shall accrue or be paid to anyone.

BY-LAWS

1. This association shall be known as the Leland Carter Burial Association and its principal place of business shall be located in Mammoth Spring, Fulton County, Arkansas.

The annual meeting of the Association shall be held on the 1st day of April of each year, at the principal office of the Association in Mammoth Spring, Arkansas, at which meeting each member in good standing in accordance with these by-laws shall be entitled to vote, either in person or by proxy.

(a) Notice of time and place of such meeting shall be given in writing at least fifteen days before the date thereof.

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(b) A Board of Directors of three members shall be elected at the annual meeting of the Association and they shall serve for a term of one year, or until their successors are elected and qualified. They shall assume office immediately after their election. The Board of Directors shall have full power and authority to manage and direct the affairs of the Association in compliance with the by-laws and are authorized to make any changes in the by-laws which in their opinion appear to be to the best interest of the Association. Any changes made in the by-laws by the Board of Directors during intervals between annual meetings shall be binding upon the Association and its members while in effect, but all such changes made by the Board of Directors may be ratified, modified, or rescinded by the members at the annual meeting.

(c) Any vacancy occurring in the Board of Directors or in any office for any cause shall be filled by appointment by the Board for the remainder of the term.

2. The Secretary-Treasurer shall be the executive officer of the Association, and he shall keep all records, books and accounts, approve or reject all applications and issue certificates of membership, levy and collect all assessments, and do and perform all things necessary or proper in the operation of the Association and to its best interest in accordance with these by-laws and the laws of the state of Arkansas and the rules and regulations of the State Bank Commissioner. He shall make a good and sufficient bond, payable to the State Bank Commissioner for the use and benefit of this Association, in a sum fixed by the said Bank Commissioner, to account for all money and property of the Association coming into his hands.

3. Application for membership shall be made in writing and signed by the applicant or his parents or guardian, shall state the age and condition of health of each person for whom a membership is desired and any misrepresentation in said application as to the age or condition of health of any applicant shall render said application and the certificate of membership issued thereon null and void and the Association shall not be liable for any claim on account of said certificate of membership.

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4. Certificates of membership shall be issued to each person or group of persons whose application for membership, has been approved and who has paid the membership fee prescribed by the Association for the class of certificate desired. The membership fee shall not be included in the funds of the Association and all or any part thereof may be allowed as compensation to the agent soliciting the membership as the Board of Directors may determine.

CLASS AAA -- \$500 FUNERAL  
3 mo. to 60 years of age, \$1.25

CLASS AA -- \$400. FUNERAL  
3 mo. to 60 years of age, \$1.00

CLASS A -- \$300 FUNERAL  
3 mo. to 60 years of age, 75¢

CLASS B -- \$200 FUNERAL  
3 mo. to 60 yrs. of age, 50¢; 60 to 70 yrs of age \$1.50

CLASS C -- \$150 FUNERAL  
3 mo. to 60 yrs. of age 40¢; 60 to 70 yrs of age, \$1.20

CLASS D -- \$100 FUNERAL  
3 mo. to 6 years of age 25¢

Applicants over the age of sixty, and up to seventy years, will be considered provided other younger members of the family are included on the same application.

6. When a child passes the age of six or twelve years, as the case may be, the parents or guardian of said child shall notify the Secretary-Treasurer so that he may make the necessary changes in the records of the Association and in the Assessments and funeral benefits.

7. The Board of Directors shall direct the Secretary-Treasurer to levy an assessment whenever it appears necessary in order to produce sufficient funds to provide funeral benefits for deceased members, and said assessment shall be made with sufficient frequency to maintain the Association free of debt and provide adequate funds to meet the needs of the Association for cost of operation and funeral benefits between assessments as far

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as possible. Should any assessment not produce funds sufficient to pay for funeral benefits for deceased members and expense of operation, then the Association shall be liable only to the extent of the funds collected.

8. Each member shall be assessed in the amount specified above as the assessment fee in the class in which he holds a certificate of membership the assessments shall be the same for all members in the same class, and no change shall be made in the amount of said assessment fee while the certificate of membership is in force.

9. Assessments are payable at the office of the Association in cash or by check or money order fifteen days after the date of assessment is levied, and upon failure of any member to pay said assessment within said fifteen days his certificate of membership shall lapse and said member shall not longer be entitled to receive any benefits from said Association. A lapsed member who has been out of the Association less than a year may be re-instated by paying all back assessments and signing an affidavit that he is in good health.

10. The assessment shall be levied against all persons who have been members of the Association for thirty days or more prior to date of an assessment, and the notice of said assessment shall be mailed to the address of the member shown on the application blank unless notice of a change of address has been given to the Association. Notice of change of address should be given promptly to avoid failure to receive assessment notices and consequent failure to pay assessments when due.

11. All funds received by the Association from assessments or any other sources shall be placed in an insured bank to the credit of the Leland Carter Burial Association, and all disbursements shall be by check signed by the Secretary-Treasurer.

12. Upon the death of a member of the Association those in charge of the body of the deceased shall



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notify the Secretary-Treasurer who shall furnish funeral services and supplies through an undertaker of his choice.

Funeral services and supplies shall be furnished a member of the Association wherever he may be, upon notice to the Secretary-Treasurer. If on account of distance the undertaker customarily employed by the Association cannot service the body of the deceased on account of the distance to be traveled, then the Secretary-Treasurer, whenever advisable, shall employ another undertaker who can service the body.

13. No cash shall be paid to the family or those in charge of the body of the deceased but all amounts for which the Association is liable shall be applied in payment to the undertaker for funeral services and supplies furnished by him. Those in charge of the body of the deceased shall have the privilege of selecting the supplies and determining what services shall be furnished up to the value of the certificate. If services and supplies in excess of the amount to which the member is entitled under his certificate are desired, these can be arranged for by those in charge of the body of the deceased and additional payment made by them.

14. Failure to notify the Secretary-Treasurer of the death of a member before he is buried shall forfeit all right of the deceased to benefit under his certificate of membership. The Secretary-Treasurer shall contract for all debts chargeable to this Association.

15. The Association shall pay all funeral benefits and other expenses promptly as they accure and shall not go into debt for any purpose.

16. The Association shall not borrow money nor shall its assets be pledged for any purpose and at no time shall it be liable on any claim of any nature or amount whatsoever in excess of the proceeds of a single assessment.

17. Expenses of the Association shall be limited

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to printing, stationery, postage, necessary office supplies, expense and clerical hire, statutory and examination fees and other expenses approved by the Bank Commissioner.

18. The books and records of the Association shall be kept so as to accurately reflect the actual condition of the Association at all times and shall be open for inspection by the examiner of the State Bank Department or by any member of the Association at all reasonable times.

19. Above constitute all the rules and by-laws of the Leland Carter Burial Association.

(On reverse side.)

Endorsements

Leland Carter

Burial Association

Mammoth Spring, Arkansas

No.

7814

FAMILY GROUP BURIAL  
CERTIFICATE

Clarence W. Sanders

Payor

Rt. 2 Box 174 Alton, Mo.

Address

Date ....May.3..... 19 50..

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In the event of the death of any insured member, please notify Leland Carter-Secretary-Treasurer, or the office of the Association."

As we view Contract No. 7814, in the light of by-laws and regulations of Leland Carter Burial Association which are made a part of such contract, the Association agrees with the members of the family group named therein, to furnish at the death of any member of such group a funeral service of a definite money value for such member only in the event that the member's definite assessment fees have been paid and his membership has not lapsed, the value of such services bearing no true or correct relationship to the assessments paid.

#### CONCLUSION

It is the opinion of this office that Contract No. 7814, issued by Leland Carter Burial Association of Mammoth Spring, Arkansas, to a member of said Association in Missouri, and bearing date of May 3, 1950, is an insurance contract, 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 contract to be subject to the penalties prescribed by Sections 375.300 and 375.310 RSMo 1949.

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

Yours very truly,

John M. Dalton  
Attorney General

JLO'M:vlw