BURIAL SOCIETIES: May admit members up to sixty-six (66) years of age.

March 29, 1939

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Mr. Willard B. Leavitt
Prosecuting Attorney
Polk County
Bolivar, Missouri

Dear Mr. Leavitt:

We wish to acknowledge your letter of March 14th, as follows:

> "I would like your opinion or ruling on Section 5014 R. S. 1929 where it says; Provided that no member shall be admitted into such association who AT HIS OR HER LAST BIRTHDAY WAS OVER THE AGE OF 65 YEARS.
>
> Does this mean that a person is eligible for the insurance up to the age of 66. Or does it mean that insurance can't be written after a person has his 65th birthday."

Section 5014 R. S. Mo. 1929, states that associations may be incorporated under the provisions of Article X, Chapter 32 R. S. 1929, for the purpose of furnishing funeral or burial benefits for their members:

> "Provided, that no member shall be admitted into any such association who, at his or her last birthday was over the age of 65 years * * * "

A man or woman, as we view the above quoted portion,

could be sixty-five (65) years and 364 days, and at their last birthday be only sixty-five (65) years and thus eligible to become a member within the meaning of the above section.

We have been unable to find any age limitation, which is actually like the one before us for consideration. However, in the case of Watson vs. Loyal Union Life Association of Muskogee, 286 Pac (Sup. Ct. of Okla) 888, the certificate was issued by the company under a statute which provided that the articles of association of mutual benefit societies have incorporated therein the following:

> "' Article III shall state the objects of the association and the plans by which these objects are to be carried out, including the extreme limit of age of persons to whom benefit certificates may be issued, which limit of age shall not exceed fifty-five (55) years.'"

The defendant contended that the certificate was void for the reason that the insured was over fifty-five (55) years of age at the time it was issued and that for this reason no recovery could be had. The court in holding that under the above article a person was not over fifty-five (55) years of age until he arrived at the age of fifty-six (56) said:

> "As before stated, the certificate was issued May 31, 1927. Insured was born December 24, 1871, and was therefore, at the time of the issuance thereof, 55 years, 4 months, and 4 days old. She arrived at the age of 56 December 24, 1927. Was she then at the time the certificate was issued over 55 years of age within the meaning of the act in question?" We arrive at the conclusion that she was not. A person is ordinarily not considered over 55 years of age until he arrives

> at the age of 56. It may safely be said that it is universally so understood, and it occurs to us that this must have been the sense in which the language was used by the Legislature.
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> Defendant contends that the very moment one passes his or her fifty-fifth birthday, he or she is then over 55 years of age. If this contention be correct, the question naturally arises: At what period in a man's life would he be said to be only 55 years of age? He certainly would not be of that age until he reaches his fifty-fifth birthday. If the contention of defendant be correct, no one could legally give his age as 55 years one hour or one moment after he passes his fifty-fifth birthday. We cannot believe that the Legislature intended that the act should be so construed, but, on the contrary, are of the opinion that the language used should be construed in its ordinary sense and be given its ordinary meaning. We prefer to so construe it, and in so doing arrive at the conclusion that insured was not over 55 years of age at the time she took out the certificate in question."

The above case is cited and quoted with approval in the case of James vs. Colonial Mutual Life Association 47 Pac. 2nd (Cal) 362, l.c. 363.

And in the case of Wilson vs. Mid-Continental Life Insurance Company of Oklahoma City 14 Pac 2nd (Okla) 945, the court in holding that the phrase "under the age of sixty-five (65) years," within a clause in an automobile accident policy excluding coverage of persons over sixty-five (65) years was inapplicable to persons who had not reached their sixty-sixth birthday, said:

"The only provision or reference as to age limit provided in the policy is: 'Sec. 17. The insurance under this Policy shall not cover any person under the age of eighteen nor over the age of sixty-five years.'

In construing section 2, chap. 32, Sess. Laws 1925, with reference to age limit which reads as follows: 'Article III. Shall state the objects of the association and the plans by which these objects are to be carried out, including the extreme limit of age of persons to whom benefit certificates may be issued, which limit of age shall not exceed fifty-five (55) years,' in the case of Watson v. Loyal Union Life Ass'n, 143 Okl. 4, 286 P. 888, this court said in the syllabus: 'A person is not over 55 years of age, within the meaning of section 2, chapter 32, S. L. 1925, until he arrives at the age of 56.' And in the body of the opinion this court said: 'A person is ordinarily not considered over 55 years of age until he arrives at the age of 56. It may safely be said that it is universally so understood. * * * * *'

We are of the opinion that in construing the ordinary and generally accepted meaning of the language used in the policy, fractions of a year should not be considered, and that the insured having not reached his sixty-sixth birthday at the time of the accident and death, that he was therefore not 'over the age of 65 years,' and that the policy was in force at the time of his death, and that the demurrer should have been overruled."

In view of the foregoing reasoning, we are of the

opinion that a person is eligible for membership in associations governed by Section 5014 R. S. Mo. 1929, until he or she arrives at the age of sixty-six.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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MW:RT