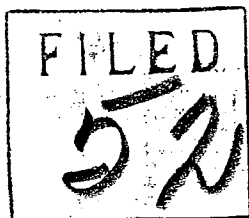


INSURANCE: Certificate No. 63955 of The W. H. Irby Burial Association constitutes an insurance contract, and offering of the same in the state of Missouri without meeting the requirements of the Missouri Insurance Code is an offense under Section 375.310, RSMo 1949.



June 8, 1954

Honorable C. Lawrence Leggett  
Superintendent of the Division of Insurance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Leggett:

The following opinion is rendered in reply to your request reading as follows:

"You will find inclosed a certificate issued by the Russell-Ermert Burial Association (successors to the captioned Association) in Butler County, Missouri.

"This is to request an official opinion from your office as to whether or not the inclosed document constitutes an insurance policy under the laws of this State. Further, does the issuance of the certificate by agents in this State constitute engaging in unauthorized insurance business under the applicable laws of the State?

"Please return the inclosed certificate when it has served your purpose."

Certificate No. 63955 dated April 29, 1948, issued by the W. H. Irby Burial Association to Mary C. Biggs reads as follows:

"This certificate is valuable and should be kept in a safe place. Receipts of payment of assessment should also be kept with the certificate as proof of payments.

Certificate No. 63955

Honorable C. Lawrence Leggett

THE W. H. IRBY BURIAL ASSOCIATION  
Rector, and Corning, Arkansas

This is to certify that Mary C. Biggs having paid the required membership fee, and having designated and elected to take burial benefit Class Special not exceeding \$500.00 and further qualified by promising to be loyal to said Association and to be governed by its by-laws, is entitled to his

CERTIFICATE OF MEMBERSHIP

in the W. H. Irby Burial Association of Rector and Corning, Arkansas and to all the benefits of the association as set forth in the by-laws so long as he shall remain a member thereof.

In witness whereof the signature of the Secretary-Treasurer is hereunto affixed at Rector, Arkansas this 29 day of April 1948.

/s/ W. H. Irby  
Secretary-Treasurer"

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

Honorable C. Lawrence Leggett

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:

"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

Honorable Lawrence C. Leggett

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, l.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, 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 of contingency insured against and the duration thereof.' 'A promise to pay or indemnify in a fixed or ascertainable amount.'"

Rules and by-laws of the W. H. Irby Burial Association of Rector and Corning, Arkansas are made part of Certificate No. 63955 issued to Mary C. Biggs and comprised of fourteen separate paragraphs. A review of these rules and by-laws cause this certificate to be brought squarely within the ruling in State v.

Honorable C. Lawrence Leggett

Black, which is cited above, and it is not deemed necessary to discuss any particular rule or by-law of the association which causes Certificate No. 63955 to be denominated a contract of insurance.

CONCLUSION

It is the opinion of this office that Certificate No. 63955 dated April 29, 1948, issued by the W. H. Irby Burial Association of Rector and Corning, Arkansas to Mary C. Biggs constitutes a contract of insurance, and offering the same in the state of Missouri without meeting the requirements of Missouri's laws relating to organization and regulation of insurance companies will cause persons so offering such certificate to be subject to the penalties prescribed by 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/vtl