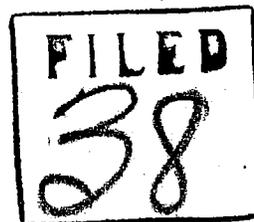


INSURANCE: "Service certificate" described in opinion and purportedly issued by Shetley Funeral Home is a contract of insurance and offering of the same to the public without meeting licensing requirements of Missouri's insurance code ~~and~~ violates Sections 375.300 and 375.310, RSMo 1949.

July 17, 1959



Honorable Eugene S. Heitman
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Sir:

In reply to your recent inquiry, this opinion construes an instrument referred to as a "service certificate," purportedly issued to the public by Shetley Funeral Home, Lutesville, Missouri. The "service certificate" is examined with a view to determining if it is, in point of law, a contract of insurance, the issuance of which is subject to the provisions of Section 375.310, RSMo 1949, providing, 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 order that no doubt will exist as to the written provisions of the "service certificate" being construed, it is here quoted in its entirety:

"COPY

"\$ 300.00

No. 14

KNOW ALL MEN BY THESE PRESENTS, that the,

SHETLEY FUNERAL HOME
Lutesville, Missouri

Party of the first part, has bargained and sold unto:

WILLIAM M. SHELTON

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"Party of the Second Part, together with the members of his family as follows:

Name	<u>William M. Shelton</u>	Age	<u>78</u>
	Monthly		
	Quarterly payment		<u>\$6.00</u>
Name	-----	Age	-----
	Quarterly payment		-----
Name	-----	Age	-----
	Quarterly payment		-----
Name	-----	Age	-----
	Quarterly payment		-----
Name	-----	Age	-----
	Quarterly payment		-----
Name	-----	Age	-----
	Quarterly payment		-----
Name	-----	Age	-----
	Quarterly payment		-----
Name	-----	Age	-----
	Quarterly payment		-----
Name	-----	Age	-----
	Quarterly payment		-----

PRE-ARRANGED FUNERAL AND BURIAL SERVICE

Of the reasonable value of THREE HUNDRED-----
-----DOLLARS to be furnished and supplied by
First Party unto each of the persons named on
this certificate upon the decease of such per-
son; and that in consideration therefore, the
Second Party does agree to pay unto First Party
the aforementioned sum of \$ 300.00, payable
monthly in installments of \$6.00 each, the first
payment due and payable the first day of October
1953, and further like payments due and payable
upon each, the first day of each month in each
year hereafter, until the entire sum is paid.

That the Funeral and Burial service purchased
and evidenced by this certificate shall consist
of the following items:

1. Embalming and otherwise preparing the body for
burial.

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"2. Providing a casket and any necessary clothing, all as may be selected by relatives or friends in charge, within the limits of this agreement.

3. Providing a funeral coach without further charge within the limit of 50 miles from the mortuary.

4. To conduct and provide services incident to the funeral.

First parties also agree that the purchase of this service certificate does moreover entitle the holder to ambulance service for himself, and to any named member of his family to whom this service is properly to be rendered upon the written order or advice of a physician to the effect that such service is necessary or required; upon the condition however, that if the mileage driven on any one trip exceeds fifty miles, a reasonable charge shall be made for each mile over 50 necessarily traveled.

A grace period of not exceeding 30 days after due date will be allowed for the making of the payments required hereby, and failure to make the payments required will release First Party from any obligation under this sales agreement and payments received may be retained as liquidated damages.

SHETLEY FUNERAL HOME

By ss. Coy Shetley _____"

The foregoing "service certificate" evidences an agreement between Shetley Funeral Home, as First Party, and William M. Shelton, as Second Party, with the former agreeing to perform services upon the decease of the latter, such services to be of the value of three hundred dollars. No provision is found in the agreement which would allow, or obligate, anyone other than the Second Party to make all payments under the agreement before the services would be rendered. Installment payments are fixed at six dollars monthly from October 1, 1953, "until the entire sum

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is paid." Orderly payment of installments will result in a paid-up "service certificate" after four years and two months. While the "service certificate" provides that "failure to make the payments required will release First Party," such provision is effective only during the life of the Second Party. The "service certificate" contains no language which would relieve the First Party from furnishing services to the full value of three hundred dollars upon decease of Second Party if no default in payment of installments was made prior to the death of the Second Party.

In *State ex rel. Inter-Insurance Auxiliary 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:

"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:

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"* * * 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, 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

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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.'"

In searching the "service certificate" for the "risk" element so essential to a contract of insurance, we find it in the following observation. Should the Second Party die prior to making all payments then due under the agreement, with no default in evidence, that which he will receive in services will not necessarily bear any true relationship in money value to the agreed value in money of the services promised and to be rendered by the First Party, and it is such circumstance which presents the tangible "risk" being insured by the First Party. The "risk" element would be absent from this "service certificate" if the estate of the Second Party, or other parties, were required to pay any unpaid installments falling due after the decease of the Second Party, and necessary to meet the total cost of three hundred dollars mentioned in the "service certificate." Absent such a provision in the "service certificate," the Shetley Funeral Home has insured a risk by promising to furnish services of a determined money value on the contingency of death without such valued services bearing any true relationship to the amount which may be paid to insure the performance of such services.

CONCLUSION

It is the opinion of this office that the within described "service certificate," purportedly issued by Shetley Funeral Home is a contract of insurance within the meaning of language contained in Section 375.310, RSMo 1949, and offering of such "service certificate" to the public without meeting requirements of Missouri's laws relating to organization and regulation of insurance companies will cause persons so offering such "service certificate" to be subject to penalties prescribed by Section 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:cm