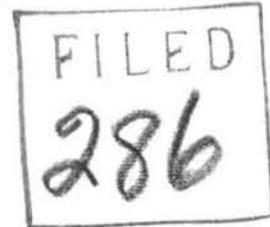


INSURANCE: A corporation which agrees for a specified annual payment to reimburse or furnish, wholly or partially, to its contract holders financial responsibility bonds, bail bonds, accident-travel expenses, legal expenses, emergency road service, towing, and tire changing arising from the operation of motor vehicles is engaging in the insurance business.

OPINION NO. 286

September 5, 1967

Honorable Robert D. Scharz
Commissioner of Insurance
State of Missouri
Jefferson Building
Jefferson City, Missouri



Dear Mr. Scharz:

Reference is made to your recent request for a formal opinion from this office in regard to a contract issued by the Allied Auto Acceptance Corporation. You have inquired whether or not Allied Auto Acceptance Corporation is doing the business of insurance by issuing this contract.

The contract in question was issued for a period of one year in consideration of the payment of \$105. The contract is described generally on its face as follows: "A SERVICE INSTITUTED FOR THE BENEFIT OF ITS CONTRACT HOLDERS" The following words appear on the face of the contract in bold type preceded by stars: SAFETY: SECURITY: SERVICE: PROTECTION: The contract is made applicable to a named applicant and a named motor vehicle. It is provided that the company will furnish a Financial Responsibility Bond up to \$20,000 for the contract holder or will reimburse the contract holder for the cost for such bond if requirement for such bond arises by reason of the ownership or operation of the motor vehicle. It further provides that the company will furnish to the contract holder or reimburse for the cost thereof a Bail Bond not to exceed \$5,000 for arrest of the contract holder arising from the ownership and operation of the motor vehicle. Other contractual provisions are offered under the following descriptions: "MONEY FOR ACCIDENT-TRAVEL EXPENSES; LEGAL EXPENSES; CAR THEFT REWARD; DAY AND NIGHT EMERGENCY ROAD SERVICE; TOWING; and TIRE CHANGING" A further description of these contractual provisions is unnecessary for the purposes of the conclusion herein.

Honorable Robert D. Scharz

Missouri's statutes do not define the term "insurance". In *State ex rel. Inter-Insurance Auxiliary Company v. Revelle*, 257 Mo. 529, 1.c. 535, 165 S.W. 1084, the essential elements of a contract of insurance are alluded to in the following language:

"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, 1.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 *Richards On Insurance, Fifth Edition, Vol. 1, Sec. 4, p. 11*, we find the following:

"Where statutory definition is lacking, what constitutes 'insurance' is left to judicial decision and temperament."

At 44 C.J.S., *Insurance, Section 59, p. 528*, we consider the following language appropriate as an introduction to our problem:

"Whether a company is engaged in the insurance business depends, not on the name of the company, but on the character of the business that it transacts, and whether that business constitutes an insurance business subject to regulation as such is determined by the usual course of business, and whether the assumption of a risk, or some other matter to which it is related, is the principal object and purpose of the business. In determining whether a business is an insurance business, the nature of the contract or forms in which the parties state their relations must be considered, and whether a contract is one of insurance is determined by its purpose, effect, contents and import, and not merely from its terminology, although it does not, on its face purport to be one of insurance, and even though it contains declarations to the contrary."

Honorable Robert D. Scharz

The following admonitions are not to be overlooked when considering whether an association is unlawfully engaged in the insurance business, and are found at 44 C.J.S., Insurance, Section 70, p. 549:

"The prohibition against engaging in the business of insurance without the prescribed authority is held absolute. In determining whether or not an association is engaged in the business of insurance in violation of law, the court is concerned with the plan as a whole and not with artificially segregated single phases of the plan."

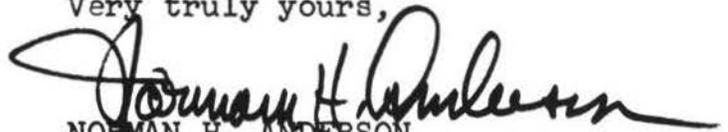
Under the agreement of Allied Auto Acceptance Corporation with its contract holder the company has promised to indemnify the contract holder if he becomes obligated to furnish a Financial Responsibility Bond or a Bail Bond. The company has also agreed to indemnify the contract holder for accident-travel expenses, legal expenses, emergency road service, towing, and tire changing in the event that the contract holder incurs such expenses through the ownership and operation of the motor vehicle described in the contract. Thus, under the legal principles set forth above the contract in question constitutes engaging in the insurance business by Allied Auto Acceptance Corporation.

CONCLUSION

It is the opinion of this office that the contract described herein executed by Allied Auto Acceptance Corporation is a contract of insurance.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Thomas J. Downey.

Very truly yours,



NORMAN H. ANDERSON
Attorney General