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BURIAL INSURANCE SOCIETIES: Persons or corporations doing
burial insurance business without authority
from Insurance Department subject to punishment.

October 17, 1941

Honorable Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri



Dear Sir:

In your letter of August 23, 1941, you wrote this
office requesting an opinion as follows:

"My attention has been called to a recent criminal suit filed against a man named Meister, owner of a Boonville Funeral Home, and Roberson for violation of the Burial Association regulations.

"I have read the recent Supreme Court opinion in the case of State ex inf. Williamson versus Black and others which held that Burial Associations must operate solely under the supervision of the Insurance Department.

"There is a concern in Marshall that sells policies for the Barry County Burial Association of Cassville. I understand that the recent legislature failed to pass a bill regarding the Burial Associations of this state.

"I would like to have your opinion as to whether or not this Association and its agents in Saline County are violating the law and if they are subject to prosecution."

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Your letter fails to state any facts as to how the concern mentioned does business.

In your letter mention is made of the case of State ex inf. Williamson v. Black, et al., 145 S. W. (2d) 406. As you know, this case held unconstitutional and void the sections of the statutes under which numerous burial insurance societies had been incorporated and were doing business, and the following language was used at l. c. 409:

" * * * It seems obvious that the Act of 1917, and present Sections 5014-5019, provide for incorporation, as benevolent corporations, of associations which would actually be business corporations authorized to operate solely upon an insurance basis. Therefore, these sections conflict with and violate Section 21, Article 10 of our Constitution, and we must hold them unconstitutional and void in so far as they are thus in conflict with the Constitution."

By this decision, all persons who had been doing a burial insurance business by reason of an attempted incorporation under the above numbered sections were placed in the position of never having had authority to do such business. An unconstitutional law is no law. State ex rel. Miller v. O'Malley, 342 Mo. 641, l. c. 652.

"An unconstitutional statute is no law and confers no rights. (12 C. J., sec. 168, p. 748; 6 R. C. L., sec. 117, p. 117). This is true from the date of its enactment, and not merely from the date of the decision so branding it. (12 C. J., sec. 228, p. 800; Gilkeson v. Mo. Pac. Ry. Co., 222 Mo. 173, 204, 121 S. W. 138, 148, 24 L. R. A. (N. S.) 844, 17 Ann. Cas. 763; Pederson v. Patterson, 124 Ore. 105, 109, 258 Pac. 204.)"

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Section 6020, Chapter 37, Article X, R. S. Missouri, 1939, provides a penalty for any association of individuals and any corporation transacting any insurance business without being authorized by the Superintendent of Insurance to do so. This penalty is to be recovered by ordinary civil action.

Section 6014, Chapter 37, Article X, R. S. Missouri, 1939, makes it a misdemeanor for any person or persons to 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 are licensed and authorized to do business.

As above mentioned, your letter contains no statement of facts as to how the concern therein mentioned does business.

CONCLUSION

It is the conclusion of this department that any persons doing an unauthorized burial insurance business are subject to prosecution.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

WOJ:VC