

BURIAL ASSOCIATION: Former officers of defunct burial association cannot exceed the powers conferred by judgment of ouster.

February 7, 1942

Hon. Willis H. Mitchell
Prosecuting Attorney
Douglas County
Ava, Missouri

2-16

FILE
62

Dear Mr. Mitchell:

This will acknowledge receipt of your letter of February 4th, 1942, requesting an opinion as follows:

"We would like to have some legal information relative to funeral Ins. etc.

For instance, take the Barry Co. Ass'n. they have chartered in Ark. as an Inc.

Is there any way at all they can receipt the old members they were carrying here before they were put out of business.

Or will these old people have to lose what they have paid in all these years, if they do not take out the burial Ins.

As I understand the Barry Co. was not a real Ins. organization but supplement goods and service in place of paying the money as an Ins. Co. would.

The Barry Co. was not an Ins. but they have chartered in Ark. now, what we want to know is, can these old people still pay in their money to the burial Ass'n? and be protected."

Your first question, "Is there any way at all they can receipt the old members they were carrying here before they were put out of business" is best answered by the judgment

rendered quite recently in the case of State of Missouri, ex Inf. Roy McKittrick, Attorney-General vs. Mrs. W. D. Koon, et al., decided by the Supreme Court, which is as follows:

"The Court, having made the Findings of Fact as aforesaid; It is Therefore Ordered, Adjudged and Decreed as Follows:

"1. That each and all of the Respondents are ousted from purporting, claiming and holding themselves out to be a corporation under the name and style of the Barry County Burial Association, of Cassville, Barry County, Missouri, and from claiming, usurping and exercising the right, franchise and privilege of carrying on the business of writing and selling funeral and burial insurance; such judgment of Ouster to become effective and to be in force on the 5th day of April, 1942;

"2. That the Respondents be restrained and enjoined from soliciting or accepting any new burial contracts on and after the 5th day of January, 1942;

"3. That the Respondents, Mrs. W. D. Koon, Wilson Bradley and W. D. Koon, President, Vice-president and Secretary-treasurer, respectively, of the Barry County Burial Association of Cassville, Barry County, Missouri, shall hold in trust all of the assets of the said association for the benefit of the holders of said outstanding burial contracts and shall carry out and perform each and every one of said outstanding burial contracts according to the tenor thereof so long as said funds are sufficient so to do;

"4. That the costs relative to this suit together with the expenses necessary and incidental to the performance of the duties of the trustees as aforesaid shall be paid out of the unexpended proceeds of past assessments of the said association."

February 7, 1942

The respondents in the above entitled case were the managing officers of the Barry County Burial Association and the Barry County Burial Association. From this judgment it is apparent the persons who were operating the Barry County Burial Association only have authority in Missouri to carry out the existing contracts of the defunct association until the funds on hand at the time of the rendition of the judgment are exhausted.

Your second question is: "The Barry Co. was not an Ins. but they have chartered in Ark. Now, what we want to know is, can these old people still pay in their money to the burial Ass'n? and be protected." In considering this question it will be necessary to take into consideration the laws of the State of Arkansas, the Charter of the Association and the contract between the Arkansas corporation and the policy or certificate holders. This would be a question of private contract between the Arkansas corporation not authorized to do business in Missouri and the individuals who contracted with the corporation in the State of Arkansas and sent their money into that State. Under the circumstances it is regretted that we cannot furnish you an opinion on this question, leaving it to be determined by attorneys in the private practice of law in attending to the private matters of their clients.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

Roy McKittrick
Attorney-General

WOJ:CP