

INSURANCE: Described contract of Hill Funeral Home constitutes an insurance contract, and offering of the same to the public without meeting requirements of Missouri Insurance Code is an offense under Sec. 375.310, RSMo 1949.



August 7, 1953

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 attached hereto a document which purports to be a so-called 'Service Agreement' between the Hill Funeral Home of Lilbourn, Missouri, and Claude C. Loftis and Ethel M. Loftis.

"We respectfully ask for an opinion from your office as to whether or not this document constitutes an insurance contract under the applicable statutes of the State of Missouri."

In view of the fact that this opinion is addressed to a particular contract, the full provisions appearing on the face of the contract and on the reverse side thereof are herewith quoted:

"No. I.210

"AN AGREEMENT, made this 14 day of FEBRUARY  
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"BY AND BETWEEN  
HILL FUNERAL HOME  
LILBOURN, MISSOURI  
AND

"Claude C. Loftis & Ethel M. Loftis

and the members of his family, whose names are placed  
upon this agreement, as follows:

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Claude C. Loftis 37.Y \$300.00 \_\_\_\_\_  
Ethel M. Loftis 38.Y \$300.00 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

"Witnesseth: That in consideration of a subscription fee in the sum of \$1.50 cts, and the further payment of a like sum on the First day of each month hereafter, during the term of this agreement, the HILL FUNERAL HOME will furnish:

"1. Services and merchandise to the amount of Three HUNDRED DOLLARS (\$300.00) in connection with burial or funeral expenses of any member of this family, exclusive of cemetery lot or grave.

"2. Ambulance service to any hospital when required by the order or advice of a licensed physician when total distance to be traveled does not exceed 100 miles, round trip. An additional charge of Ten Cents (.10¢) will be made for each mile over 100 necessarily traveled.

"THIS AGREEMENT is in full force and effect upon delivery and payment of the subscription fee as required. A grace period of 10 days for payment to be received at the office of HILL FUNERAL HOME is granted.

"Strictly a service agreement, effective and enforceable only between the parties named herein.

"ACCEPTED:

HILL FUNERAL HOME

By \_\_\_\_\_  
Head of Family

By L. Hill  
Manager"

(Reverse Side).

"In Case Of Death, Notify Immediately

"HILL FUNERAL HOME  
Phone No. 3141  
Lilbourn, Missouri

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"No. I,210

"HILL FUNERAL HOME  
Phone No. 2141  
Lilbourn, Missouri

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"AGREEMENT WITH:

Claude C. Loftis  
And Wife  
Ethel M. Loftis

---

and members of his family named herein.

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"Service charge payable monthly to HILL  
FUNERAL HOME or to a person designated in  
writing by them to receive payments. Pay-  
ments made to any other person will not  
bind the Company.

Payments \$1.50 Monthly

"The terms of this agreement are limited to the  
persons named on this instrument, and if accepted  
by any other person or company for credit on ser-  
vices rendered, then the HILL FUNERAL HOME will be  
liable only for return of consideration actually  
paid to them."

Section 375.310, RSMo 1949, provides, in part, as follows:

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"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 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

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

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We now consider the various provisions of the contract offered by Hill Funeral Home, and quoted in its entirety in the forepart of this opinion. The face of the contract discloses that the funeral services and merchandise provided for therein are furnished by the Hill Funeral Home only after the other party to the contract has paid a subscription fee and an additional like sum on each succeeding month during the term of the contract; that the Hill Funeral Home will furnish funeral services and merchandise of the value of Three Hundred Dollars in connection with the "burial or funeral" expenses of any single member of the family, named in the contract; and a "grace period" is provided in which time an overdue monthly payment on the contract may be made and thereby save the contract's benefits to the party contracting with Hill Funeral Home. On the reverse side of the contract we find that full benefits under the contract can be obtained only if Hill Funeral Home renders the services and furnishes the merchandise; and if Hill Funeral Home is denied the right to furnish the benefits under the contract, only consideration actually paid on the contract will be returned to the other contracting party, and to no one else.

Viewed simply, the contract being considered provides that for a stated monthly consideration measured in money, the Hill Funeral Home agrees to pay a sum certain in the event of death of a named person, the sum payable bearing no true or correct relationship to the monthly payments made on the contract, since termination of said contract with full benefits thereunder rests upon the contingency of cessation of human life.

In view of the foregoing authorities and the terms of the contract being considered, the conclusion that such contract is one of insurance is inescapable.

#### CONCLUSION

It is the opinion of this office that the contract of Hill Funeral Home, fully described in the foregoing opinion, constitutes an insurance contract, and offering of the same to the public without meeting requirements of Missouri's laws relating to organization and regulation of insurance companies will cause persons so offering such contracts to be subject to the penalties prescribed by Section 375.310, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON  
Attorney General