

**Burial Associations, Are Amenable to Insurance Laws.
Insurance, Burial Contract is.**

Association of persons providing for the burial and funeral expenses of deceased members through assessments, are insurance associations within the laws of this state, and subject thereto.

Helena, Montana, January 17, 1916.

Hon. William Keating,
State Auditor,
Helena, Montana.

Dear Sir:

You have submitted to this office the question:

Whether so called burial associations, one of whose articles of association and by-laws, and certificates of a membership, you have submitted, are subject to the insurance laws of this state?

Insurance is defined by the Codes of this State, Section 4545, Revised Codes, 1907, as follows:

"Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event."

Section 5546 of the Codes, prescribes what events may be insured against:

"Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this Chapter."

Section 4159, Revised Codes of 1907, enumerates and prescribes what corporations, associations or societies are subject to the insurance laws of the State:

"Any corporation, association or society, which issues any certificate, policy, or other contract whereby upon the death or other physical disability of the assured thereunder resulting from accidental injuries, any benefit is to accrue to the assured or to his legal representatives or to the beneficiaries designated by him, which benefit, the accumulation of reserve or emergency funds and the expenses of the management and prosecution of the business, are provided for by payments to be made, either at periods named in the contract or upon assessment

as required by persons holding similar contract, and where in the assured's liability to contribute to the payment of benefits accrued or to accrue is not limited to a fixed sum, shall be deemed to be engaged in the business of accident insurance upon the assessment plan, and the business involving the issuance of such contracts shall be carried on in this state only by duly organized and authorized corporations, which shall be subject only to the provisions and requirements of this act. Nothing contained in this act shall be construed to apply to secret or fraternal societies, lodges, or councils now doing business in this state, which conduct their business and secure members on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils, and which are under the supervision of a grand or supreme body, nor to any association organized solely for benevolent purposes and not for profit, and which do not employ paid agents in soliciting business."

The object of the association, as shown by Article II of its articles of association, is:

"The object of this Association shall be to provide a plan for the payment, by assessment, of the burial expenses of each beneficiary member, to the amount of Two Hundred Dollars for each beneficiary member ten years of age or over, and One Hundred Dollars for each beneficiary member under ten years of age."

A schedule of assessments is provided for by Article VI of the articles of association, and by Article X, it is provided that:

"The benefits herein provided are for the purpose of furnishing respectable funeral and burial service for deceased beneficiary members, and for no other purpose, and the benefits provided are to be paid to the undertaker furnishing such services, and not to surviving relatives or friends as death benefits."

Nowhere in the articles of association is provision made for fraternal or social features, so that it cannot properly be classed with associations having such objects in view. Nor can this be classed as a charitable organization, since the relationship between the members is one essentially of contract.

Such organizations have almost universally been held by the courts to be insurance companies, and subject as such to the laws of the state relating to insurance corporations or associations. As the cases point out, the principle ingredients of an insurance contract, are:

1. Consideration (the premium for insurer's undertaking);
2. The risk (perils or contingencies against which the insured is protected);
3. The indemnity (the stipulated benefit to be paid or furnished, in case of loss or happening of the contingency specified.)

It is true that Article X provides that the benefits provided, are to be paid to the undertaker furnishing the services, and not to surviving relatives—apparently with the idea of making it appear that

there is lacking in this contract any beneficiary. This provision, however, does not take it without the law relating to insurance, when the real consequence of the contract is considered. While the undertaker may in a sense benefit from the contract entered into without having any insurable interest in the life or well being of the assured, this benefit is incidental, and arises from the profit made from conducting the burial service, and furnishing the necessities. The real beneficiaries are the surviving relatives of deceased, if there are any, or his estate, in as much as they are by the contract, saved what would otherwise be a legal charge against them. As was said by the Supreme Court of Kansas:

"The controlling elements of the contract, as interpreted by the by-laws, are only material responsibilities, similar to those in ordinary mutual life insurance companies. The members of the association are both the indemnitors and indemnitees."

I am of the opinion, therefore, that such associations, as the one described in the literature submitted by you, are insurance associations within the meaning of the laws of this state, and subject thereto. This view is upheld by the following cases:

State v. Wichita Mutual Burial Association, 73 Kan. 179, 84 Pac. 757;

State v. Willett, 171 Ind. 296, 86 N. E. 68;

Robbins v. Hennessey, 86 Ohio St. 181, 99 N. E. 319;

Physicians' Defense Co. v. O'Brien, 100 Minn. 490, 111 N. W. 396;

Physicians' Defense Co. v. Cooper, 188 Fed. 832, 199 Fed. 576;

State ex rel T. S. Hogan, Atty. Gen. v. Rinchler, (O.) 107 N. E. 758; L. R. A. 1915, D. 501.

Three cases holding opposite views are:

Vredenburg v. Physicians' Defense Co. 126 Ill. App. 509;;

State v. Laylin 76 N. E. 567; 73 Ohio St., 90; -

Commonwealth v. Provident Bicycle Association, 178 Pa. St., 637; 36 Atlantic 197.

These cases, however, overlook the point that the costs of a law suit might be a loss as much as a judgment. The risk of financial loss occasioned by merely being sued is a contingency which may damnify a person whether judgment might be taken or not. These cases, therefore, do not appear to be well reasoned, and certainly are against the weight of authority.

Yours very truly,

J. B. POINDEXTER,

Attorney General.