

Insurance—Juvenile Insurance—Fraternal Benefit Associations.

It is unlawful for Fraternal Benefit Associations to insure children under 16 years of age in this state.

June 21, 1918.

RE: Juvenile Insurance by Fraternal Benefit Societies and Associations.
Hon. R. G. Poland, State Auditor and
Commissioner of Insurance ex officio,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date relative to the above subject, which said letter is as follows:

"I submit herewith letter from the Neighbors of Woodcraft, Portland, Ore., under date of March 15th, and letter from the Brotherhood of American Yeomen of Des Moines, Iowa, under date of March 14th, both written with reference to the question of Juvenile insurance in Montana, and request that you render your opinion as to whether insurance may be written on the lives of children in the state of Montana under the Fraternal Benefit Association law of this state.

"This department has held that Section 7 of the law prohibits the writing of insurance on the lives of children under

sixteen years of age, and following is the opinion of Mr. Paul L. Woolston, of Denver, Consulting Actuary for the Montana Insurance Department, as expressed in a communication to this office under date of January 22, 1918.

"While there is nothing that I find in the Insurance Law relating thereto to prevent a fraternal society from writing so-called "Juvenile Insurance" on children under age 16 in such states as permit it under their laws, such insurance is unlawful in the State of Montana and the above order may not write it in your state. Section 7, Page 20, of the Insurance Law provides,

"Any society may admit to beneficial membership any person not less than 16 and not more than 60 years of age." * * *

"This forbids the writing of children less than 16 years of age until the law is amended to so provide. Such a bill has been passed in a number of states through the influence of the fraternal orders, but not in Montana."

"Several states have amended their Fraternal Benefit Association Laws to provide for juvenile insurance and this department has advised several fraternal benefit associations, which desired to write that class of business in this state, that it could not be done until such time as the legislature would amend our present law to provide for such insurance.

"You are therefore requested to render your written opinion on the matter at your early convenience."

I am also in receipt of an extensive brief thoroughly covering this subject prepared by Hon. Frank S. Grant, of Portland, Oregon, submitted in behalf of the Neighbors of Woodcraft, a fraternal benefit society organized as a corporation under the laws of the State of Oregon.

Prior to 1911 the laws of this state with reference to life insurance companies, associations and societies were found in Chaps. V and VI, Title III, Part IV, Div. 1, (Secs. 4113 to 4157, inclusive) of the Civil Code of Rev. Codes 1907. Chap. V applied only to stock and mutual companies, and it is evident that Chap. VI applied only to assessment companies, none of the provisions of either of said chapters having any application to fraternal benefit societies and associations, consequently prior to 1911 this state had no statute with reference to such societies and associations.

The 12th Legislative Assembly of this state passed Chap. 140, Sess. Laws 1911, which applies only to fraternal benefit societies and associations, and whether or not such societies and associations may write juvenile insurance depends entirely upon the construction to be placed on said act, and the amendments thereto found in Chap. 164, Sess. Laws 1917.

A history of the legislation evidenced by Chap. 140, Sess. Laws 1911, is as follows:

Prior to 1911 most of the states, like this state, had laws relating to stock, mutual and assessment life insurance companies, and governing and controlling the same, but had no laws relating to fraternal benefit societies and associations. Shortly prior to 1911 the National Fraternal Congress, an organization composed of a large number of American and Canadian fraternal societies and associations, believing that these societies could be more effectually established and be given a more definite status by the adoption of laws by the several states authorizing the formation and existence of such societies and associations and providing for their government and control, caused a bill to be prepared with a view of having it passed and adopted in the different states. This bill has generally been designated as the "Mobile law," and has been passed by a number of the states. Chap. 140, Sess. Laws 1911 of this state being the "Mobile law," having been passed without change or amendment. At the time this bill was prepared for the National Fraternal Congress, and at the time the same was passed by the Montana legislature in 1911, no fraternal benefit society or association was writing juvenile insurance, that is, insurance on the lives of children under the age of 16 years, but all such societies and associations were then confining their activities to persons capable of making personal application for membership and insurance and capable of designating their own beneficiaries, and it was not until about 1914, some three years after this bill was prepared for this congress, and after Chap. 140, Sess. Laws 1911, was passed by our legislature, that fraternal benefit societies and associations commenced writing juvenile insurance.

Chap. 140 defines fraternal benefit societies, (Secs. 1, 2 and 3). It authorizes such societies to be organized and to exist in this state, and authorizes such societies, organized and existing in any other state, to be admitted to this state under certain conditions and upon certain terms. It grants to such societies, both those organized in this state and those organized in any other state and admitted to this state, certain powers to be exercised subject to certain restrictions and upon certain conditions being complied with.

This chapter nowhere in express terms limits such societies to the writing of insurance upon its own members, yet throughout the whole chapter the language used is such as to clearly imply that only such power and no other is granted to such societies.

That it was the purpose of this chapter to limit the power of such societies to the writing of insurance on its own members, and that such societies were not to have the power to write insurance on any other persons, either juveniles or adults, seems to me to be clearly shown by its provisions.

Section 12 authorizes the organization of such societies in this state and sets forth the manner in which such societies may be formed. This section provides that the persons desiring to form such a society must make, sign and acknowledge articles of incorporation. Subdivision 2 of said section requires the articles of incorporation to state "The purpose for which it is formed—*which shall not include more liberal powers than are granted by this act.*" etc. The only power

granted to such a society being to insure its own members, under Section 12, such a society could not be formed in this state to insure persons other than its own members, as such a power would be more liberal than that granted by the act. And if a society can not be formed in this state with such additional power, certainly such a society organized in any other state and admitted to this state cannot exercise any power which such a society formed in this state cannot exercise.

The language contained in Subdivision 2 of Section 12 seems to me to be an express prohibition against the exercising by such a society of any power except that granted by this chapter, and such chapter only granting power to such societies to insure members, and membership being by Section 7 restricted to persons between the ages of 16 and 60 years, it follows that such a society cannot write juvenile insurance in this state.

Respectfully,

S. C. FORD,

Attorney General.