

Insurance—Benevolent Societies—Subscription Fees.

Society or organization procuring members to pay “subscription fee” at time of joining, and who agree to pay “without legal liability to do so” \$1.00 each upon death of member, said payments to be made to the member’s beneficiary, is engaged in the insurance business rather than a benevolent enterprise.

Mr. E. V. Ahern,
County Attorney,
Havre, Montana.

July 6, 1931.

My dear Mr. Ahern:

I am enclosing a copy of an opinion rendered on May 25, 1931, to George P. Porter, Commissioner of Insurance, bearing upon the subject concerning which you desire my opinion. You write relative to the Havre Benevolent Society. However, in the opinion enclosed there was not involved in the facts in that case the question of the lack of legal liability to pay the assessment.

I have been unable after search to locate the North Dakota case referred to by you. Consequently, I have not been able to inform myself of the reasoning of the court that such a society is not engaged in the insurance business. If you can ascertain for me the name of the case and where it is reported I will be glad to look into it and advise you further.

In the meantime, I will say that it seems to me that this is in fact an insurance association or society. While the members agree "without liability to do so" to pay \$1.00 each to the association upon the death of a member, nevertheless the fact remains that the beneficiary can maintain a suit upon the contract to recover any of the voluntary contributions which are actually made. Benevolence ordinarily does not spring from contract, nor does any one have a contractual demand upon benevolence. After death of a member occurs and there are paid to the association any assessments there arises at once a legal obligation to pay the money to the beneficiary, solely because of the death of the member and the contract covering that eventuality.

To this extent at least it seems to me that the society insures the member for when death occurs his beneficiary will have a legally enforceable demand upon the society for the payment to him or her of all moneys that come to the association or society by reason of the death of the member. While the amount may be uncertain or nothing at all, contingent upon the voluntary payments of the other members, nevertheless, in my opinion, this affects only the amount payable and does not destroy the insurance features of the business.

In this connection it will further be observed that a person in order to become a member of the society is required to pay the sum of \$2.00 as a "subscription fee" at the time of making application for membership. It would hardly be said that a person joining this society pays this \$2.00 merely for the opportunity in the future of dispensing benevolence if he is inclined to do so as that opportunity is afforded to everyone without paying for it. The reasonable construction of this provision when considered with the other provisions of the agreement is that the \$2.00 are paid upon the assumption that many or all of the members will pay the \$1.00 assessment when death occurs and that the member's beneficiary will receive the same. It is a fee which the member pays to gain the benefits of the society's venture and this benefit, of course, is the anticipated payments which will be made by the other members when death occurs. Though the payments are supposed to be voluntarily made

it will also be noted that a failure to pay them terminates the defaulting member's right to the benefits of the venture. To this extent the member is required to pay the \$1.00 assessment from time to time or incur the penalty of forfeiting his legal rights. Such a society could hardly be said to be a benevolent society dispensing benevolence in case of death if the members would not pay anything to dispense, and, of course, any member joining this society expects the assessments to be paid; otherwise, he would receive no benefits whatever by joining the society.

Taken as a whole, it appears to me that the object of the society is to indemnify in case of death and in this connection will say that I have just today received a letter from a man who is a member of such a society and who states that he is insured in it and inquiring about the legality of the society's operation. Apparently, even if the society does not claim this to be insurance the very nature of the business leads its members to consider it as such and to believe that they are insured.

Therefore, I am inclined to the opinion that this society is doing an insurance business within the meaning of our laws rather than merely engaging in a benevolent enterprise.

Very truly yours,

L. A. FOOT,

Attorney General.