

Opinion No. 108.

Insurance—Benevolent Associations.

Held: A benevolent association licensed and authorized to do business under the provisions of Chapter 153, Laws of 1945, may provide for and maintain a reserve fund, under the supervision of the Commissioner of Insurance.

January 2, 1946.

Mr. John J. Holmes
State Auditor and Ex-Officio
Commissioner of Insurance
State Capitol
Helena, Montana

Dear Mr. Holmes:

You have requested my opinion on the question of whether or not a benevolent association licensed under the provisions of Chapter 153, Laws of 1945, "may maintain and assess to maintain a reserve fund."

After a careful consideration of the provisions of Chapter 153, Laws of 1945, I must answer your question in the affirmative. It is a well known fact that the purpose of enacting Chapter 153 was to give the Insurance Department control and supervision over the business and activities of certain so-called benevolent associations which had for some time been running wild throughout the state. The manner in which this business was being permitted without any supervision by the department, was in numerous cases resulting in a situation which was closely bordering on fraud. It was to correct this condition that the legislature enacted Chapter 153. This is very clearly expressed in the first section of the act, as follows:

"The purposes of this act are (1) to establish and maintain the supervision and authority of the insurance

commissioner over the business and activities of those associations hereinafter described, commonly known as 'benevolent associations.' (2) to prohibit unbridled and unregulated activities of the said associations for the better protection of the members and beneficiaries of the said associations, and the public. (3) to permit and authorize the said associations upon compliance with the provisions of this act to operate their business in the State of Montana under the jurisdiction of the insurance commissioner. (4) to extend the jurisdiction of the insurance commissioner to the officers and agents of said associations."

In order to make it clear what character of business was included within the provisions of the act, the legislature specifically defined the term "benevolent associations" as follows:

"Section 2. Definition of Terms. 'Benevolent associations.' Any corporation, association, or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members, whereby, upon decease of a member, any money or other benefit, charity, aid, or relief is to be paid, provided or rendered by such corporation, association or society to his legal representatives, or to the beneficiary designated by him, which money, benefit, charity, aid or relief is derived from voluntary donations, or from admission fees, dues, or assessments, or any of them collected or to be collected from the members thereof, or members of a class therein, or interest or accretions thereon, or accumulations thereof; and wherein the money or other benefit, charity, aid or relief, so realized, is applied to or accumulated for the uses and purposes herein specified and/or the uses of such corporation, association or society, and/or expenses of management and prosecution of its business, shall be deemed to be a 'benevolent association' for the purposes of this act." (Emphasis mine.)

Section 3 of the act outlines the procedure for obtaining a certificate of authority to do business and the show-

ing to be made, and the information to be furnished by the applicant. The information required under this section is to enable the commissioner to determine whether the applicant comes within the definition of "benevolent association" as defined by the act as well as whether its proposed methods of doing business meet the requirements of the act. It is from this information, so furnished, that the commissioner must determine whether or not to issue the certificate of authority. If this information discloses these facts, then the commissioner must issue the certificate of authority. Paragraph (c) of Section 3 provides in part:

"(c) Upon determination by the commissioner that the requirements of this act are complied with, certificate of authority shall be issued to the benevolent association by the commissioner, to transact such business as in this act herein provided . . ." (Emphasis mine.)

Whether or not an applicant for a certificate of authority meets the requirements of the act is left to the determination of the commissioner. However, he does not have arbitrary authority in this regard but must determine this question by applying the requirements of the act to the facts as given him by the applicant.

Whether or not such an organization may provide for a reserve fund and maintain the same must be determined from the provisions of the act itself. There is no provision of the act specifically authorizing a reserve fund or any other fund. However, we do find language in the act which fairly infers that the legislature intended that such an organization might make provision for a reserve fund.

In Section 2, defining what a benevolent association for the purposes of the act is, the following language is used in speaking of the benefits paid by the association to its members.

" . . . which money, benefit, charity, aid or relief is **derived from voluntary donations, or from admission fees, dues, or assessments, or any of them collected or to be collected from the members thereof, or members of a class therein, or interest or accretions thereon, or accumulations thereof**; and wherein the money or other benefit, charity, aid or re-

lief, so realized, is applied to or **accumulated for the uses and purposes herein specified, and/or the uses of such corporation, association, or society, and/or the expenses of management and prosecution of its business . . .**"

And in Section 3 of the act relating to the information required to be given the commissioner, it is provided:

" . . . The application for a license shall also be accompanied by a financial statement in the case of a benevolent association already existing . . ."

The act does not limit the amount of assessment nor the number thereof in any one year. It does, however, authorize assessments to be made upon the death of a member. But the act does not, either in express words, or by implication, require that an assessment be made upon the death of each member. I do not think the provisions of Section 6 of the act relative to assessment notification procedure in which it provides that each death claim shall be assigned a number, which number shall be consecutive for each calendar year, and each assessment notice shall show the death number to which it applies, can be taken to mean that an assessment must only be levied on each death, or that no reserve may be provided for. In my opinion, the language of this provision is merely directory and in the event that the association elects to levy an assessment upon death of a member, this procedure must be followed. However, I do not believe that this provision prohibits the members of such an association from voluntarily agreeing to pay a certain amount per month in lieu of an assessment only upon death of a member.

When it is considered that the purpose of this legislation was to correct evils existing with such associations, one of such evils being the inability under the plans as then used, to pay the full benefits provided under the certificate of membership, it is reasonable to suppose that authority to make provision for a stronger financial structure within such associations was intended by the legislature.

There is ample authority reposed in the commissioner under the act to exercise close supervision over the ad-

ministration of such associations. The detailed reports required to be filed with the commissioner, and the authority granted him to revoke certificates of authority provide ample means to safeguard the financial affairs of such associations.

In interpreting the provisions of a statute, the intent of the legislature and the design of the legislation must be considered. Our Supreme Court, in the case of *In Re Wilson's Estate*, 102 Mont. 178, 196, 56 Pac. (2d) 733, said:

“The general design and purpose of the law is to be kept in view and the statute given a fair and reasonable construction with a view to affecting its purpose and object, even if it be necessary, in doing so, to restrict somewhat the forces of subsidiary provisions that otherwise would conflict with the paramount intent.”

I am satisfied that the interpretation here given this statute with reference to creation and maintenance of a reserve fund is within the intent of the legislature and is a fair and reasonable construction in view of the evident purpose and object of the act.

It is therefore my opinion that a benevolent association licensed and authorized to do business under the provisions of Chapter 153, Laws of 1945, may provide for and maintain a reserve fund, under the supervision of the Commissioner of Insurance.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General