

Opinion No. 106.**Insurance—Casualty Benefit Associations—Insurance Commissioner.**

HELD: Automobile associations indemnifying their members against collision loss are insurance corporations under the jurisdiction of the insurance commissioner of the State of Montana, and must comply with the laws of Montana and regulations therefor.

December 10, 1954.

Mr. James P. Lucas
County Attorney
Custer County
Miles City, Montana

Dear Mr. Lucas:

You have requested my opinion as to whether a so-called benevolent auto association, hereinafter called the Association, is correctly considered an insurance corporation by the Commissioner of Insurance of the State of Montana.

The Association enters into a contract with its various members individually, which entitles the member possessed of a motor vehicle to such an amount as may be collected from the members, but limited to \$100.00, and no greater than the loss sustained in the event said vehicle is involved in collision or upset caused by accident. The member pays the \$10.00 membership and the initial \$1.00 assessment fee and promises to pay subsequent assessments as they are called. It should be noted that the executive board and officers receive and handle the funds of the Association with no provision for their bonding. The effect of the agreement between the member and the Association is that the member agrees to keep money in the fund and the Association agrees to pay money from the fund in the event of accident to the member's automobile.

Section 40-1301, R. C. M., 1947, states in part as follows:

"Corporations, associations, and societies, organized to do the following-described business, are insurance corporations within the meaning of this Act:

* * * *

"3. To insure against . . . the risks of navigation and transportation.

* * * *"

Section 40-1302, R. C. M., 1947, requires that all such insurance corporations be licensed before commencing business in the State of Montana.

Section 40-1409, R. C. M., 1947, sets forth the type of insurance that an insurance corporation under this chapter may sell. Subsection 1 of that section states in part:

". . . to insure against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; . . ."

Section 40-101, R. C. M., 1947, defines insurance as follows:

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

It is readily apparent that the members are induced to enter into this contract upon the belief that they shall be indemnified at least in part for damages resulting from the contingencies contained in the contract. There can be no other legitimate purpose for the Association. In view of the foregoing, and without reference to further authority, the conclusion is inescapable that by the laws of the State of Montana the Association purports to be in the automobile insurance business and therefore must comply with the laws of the State of Montana with respect to the regulations therefor.

In addition to the foregoing, if the Association was proposed as a motor club service company under the terms of Section 66-101, et seq. R. C. M., 1947, it would likewise be under the jurisdiction of the Commissioner of Insurance of the State of Montana, and must properly qualify and be licensed therefor.

It is, therefore, my opinion that such associations are under the jurisdiction of the Insurance Commissioner of the State of Montana and must qualify to do business as an insurance corporation in accordance with Title 40 of the Revised Codes of Montana, 1947.