

BURIAL ASSOCIATIONS: Form of contract submitted is not a
SUBMITTED FORM OF policy of insurance on its face.
CONTRACT DISCUSSED:

June 27 1949



Honorable William Lee Dodd
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Sir:

We have your letter of April 29, 1949, in which you request an opinion of this department. Your letter is as follows:

"Please find enclosed a burial policy issued in Missouri and determine if it is in violation of the laws of Missouri."

The form of contract submitted for our examination is as follows:

"THIS AGREEMENT, Made this.....day of19....., by and between Watkins Funeral Service, Inc., a Corporation of Dexter, Stoddard County, Missouri, party of the first part, and..... of, Missouri, party of the second part:

"WITNESSETH: The second party purchases of the first party the following service, articles, and merchandise at the agreed value of.....Dollars, to-wit: removal of body, embalming, clothing,casket, outside box, hearse, and limousine, which the first part agrees and promises to deliver and furnish and perform according to the terms of this contract in Stoddard County or any County adjoining Stoddard County in the State of Missouri, at the death of

Name Age Payment Amt. Contract

through the facilities of:

"WATKINS FUNERAL SERVICE, INC.

"IN CONSIDERATION of the promise and obligation of the first party hereby entered into, the second party, for and on behalf of himself, his heirs and administrators, agrees to pay to the first party the sum of \$..... to be paid in the following manner: In quarterly (three months) installments of not less than.....Dollars per quarter.

"Non-payment of any installment when due, shall be considered a breach of this agreement, and the first party shall not be obligated to perform. This contract, after default by the party of the second part, may be continued in full force and effect at the option of the first party.

"In event the second party has paid at least two quarterly installments in the amount above set out and then defaults in second parties payments, the first party agrees to credit the amount paid to the expense of the total contract price funeral when purchased from the first party for and on behalf of the second party.

"In event the second party dies outside of Stoddard County, or any County adjoining Stoddard County, if the body is returned to any point in Stoddard County or any County adjoining Stoddard County, the first party will perform all the conditions of this contract. If, however, the body is not returned to Stoddard County, or any County adjoining Stoddard County, the first party will, on request of the second party, or his representative, ship to second party or second party's representative the casket and outside box specified above, or the first party will refund all money to party of the second part paid to first party on account of deceased under this contract at the option of the second party, or the representative of the second party.

"IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on the day and year first above written.

WATKINS FUNERAL SERVICE, INC.
By: E. L. Watkins
President

Attest:

H. R. Marsh
Secretary

.....
Witness

.....
Party of the Second Part"

There is also appended to said form of contract a paper designated by its heading as "Application for Pre-Arranged Funeral Contract with Watkins Funeral Service, Inc., Dexter, Mo." The pertinent part of this paper reads as follows:

"I hereby make application for a Pre-Arranged Funeral contract with the Watkins Funeral Service, Inc. and by signing this application, I, for value received promise to pay to the Watkins Funeral Service, Inc. at its office in Dexter, Missouri, or at any other office of the Corporation \$..... each three months until I have paid \$....., the amount of this contract. The Corporation agrees, that if no contract is issued, to return the full amount paid with application."

We have considered your aforesaid letter and examined said form of contract. We have considered the question as to whether the submitted form is illegal in Missouri because it constitutes a policy of insurance issued by a corporation which has not complied with the insurance laws of the state as was true in the case of State vs. Black, 45 S.W. (2d) 406; or stated differently, whether or not this submitted contract, when fully executed, constitutes an insurance policy. With this question in view, we suggest the fact that on the face of the submitted form, there is nothing to indicate absolutely that the proposed contract is intended as an insurance arrangement.

The thing that the contract provides for is a payment of a stipulated funeral expense in installments payable every three months, and according to the terms and provisions of the contract, if the party of the second part should die immediately after the payment of his first installment, his estate would nevertheless be obligated to pay the remaining installments as they fall due. However, the party of the first part in such an event would perform the whole service provided for by the contract, in connection with the funeral and the burial of the deceased, long before the major portion of the funeral expense falls due. We are of the opinion that it is obvious from this arrangement that the contract does not constitute an insurance policy on its face.

We desire to suggest, however, that even though the contract does not, on its face, constitute an insurance policy, it would be very easy for the party of the first part, in the event that it had a substantial number of such contracts, to so conduct a business arising therefrom as to make it a fact that the association, under such circumstances, would actually be operating an insurance business. We are therefore of the opinion that even if a contract following the forms submitted is legal on its face, it has in it great potentialities for the operation of an illegal insurance business by reason of non-compliance by the party of the first part with some of the provisions therein.

CONCLUSION

We are accordingly of the opinion that this contract, while legal on its face, nevertheless could be used as a means for violation of the law.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SMW:VLM