

CONSTITUTIONAL LAW:  
CONTRACTS:  
CREDIT LIFE INSURANCE:  
EMBALMERS:  
FUNERAL DIRECTORS:  
FUNERAL PLANS:  
INSURANCE:  
STATUTES:

Sections 436.010 through 436.080, RSMo Supp. 1967, neither prohibit nor authorize the sale of credit life insurance in connection with installment purchases of prearranged funeral plans. Sales of such insurance policies are permitted, provided that all statutory requirements relating to the sale of such insurance are met. Sections 436.010 through 436.080 govern the handling and investing

of money collected only under prearranged funeral plans entered into after the effective date of those sections, October 13, 1965.

OPINION NO. 10

August 19, 1969

Honorable Harold L. Holliday  
Representative  
14th District  
1220 East 31st Street  
Kansas City, Missouri

64109



Dear Representative Holliday:

This is in response to your request for an opinion of this office concerning an interpretation of Chapter 436, RSMo Supp. 1967. In your original request you stated the questions as follows:

"1. Under the provisions of that chapter, may a seller of prearranged funeral agreements also sell the purchaser a credit life policy issued by a bona fide life insurance company and charge the purchaser an extra premium therefor? The credit life policy is for the purpose of paying the balance due under the agreement in the event the purchaser dies before the full amount has been paid."

"2. Does the enactment of Chapter 436 affect prearranged funeral agreements that were in effect prior to October, 1965, where the plan was fully paid for prior to October, 1965, or where the plan was in effect prior to 1965, but payments are being made subsequent to October, 1965?"

Upon being asked to clarify the questions, you replied in part as follows:

"The first question relates to whether or not it would be permitted, not compelled, for purchasers of a preneed funeral plan to purchase credit life insurance issued by a bona fide life insurance company with the premium being paid by the purchaser to the funeral home."

"The second question relates to the manner of handling funds collected under the provisions of pre-October 1965 contracts. I desire to know if the arrangements in effect on contracts issued prior to 1965 must be

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converted or changed to the arrangements required under the present Chapter 435 RSMo; i.e., if the funds collected on the pre-October 1965 contracts were deposited in the trust fund maintained in an institution or corporation other than those specified in the present Chapter 436 may continue to hold such funds in accordance with the contract and trust indenture executed prior to 1965. We desire to know if all funds collected on pre-October 1965 contracts must be handled in accordance with the provisions in the present Chapter 436. This question relates to contracts fully paid for in 1965, as well as to contracts which were in effect prior to 1965 but on which payments have been made subsequent to October 1965."

With respect to whether a policy of credit life insurance may be sold simultaneously with a prearranged funeral agreement, we find nothing in Chapter 436 which prohibits such a sale. By the same token, however, nothing in Chapter 436 operates to exclude credit life insurance policies sold in connection with such agreements from other requirements relating to the sale of credit life policies. Consequently, all such sales of credit life insurance would come under and be governed by the statutory provisions relating to sales of policies of such insurance. That is to say, a person who acts as an insurance agent is no less an insurance agent because the sale of insurance forms a part of the negotiation for the sale of the agreement, it is possible that Chapter 436 would control the handling of the money collected therefor, and we repeat that no opinion is expressed on such issue. But, in no event can Section 436.010 or any other provision in that chapter be read as a pro tanto repeal of the laws pertaining to the licensing of insurance salesmen and brokers.

Your second question presents the issue of whether the enactment of Chapter 436 by the Seventy-Third General Assembly governs prearranged funeral plans entered into prior to the effective date of that legislation (October 13, 1965). Prior to that time Missouri had no statutes which specifically regulated prearranged funeral plans. From the content of the sections comprising that chapter, it is obvious that they were intended as remedial measures, having as their purpose the correction or prevention of abuses arising from the retention of unearned funds for long periods of time by the sellers of such plans.

The sections in question contemplate that the plans shall be effectuated by "a written agreement not in conflict herewith." Section 436.010. The money collected by the seller may be deposited only in certain types of institutions, Section 436.020, or placed in trust and invested under certain restrictions. Section 436.040. Provision is made for the purchaser to cancel his participation in the plan and retrieve the amount paid in, less that which may be retained by the seller according to statutory formula. Section 436.060.

Hence, prior to October 13, 1965, a purchaser of a funeral plan was protected as to the handling of the money he invested in it only by the terms of his contract with the seller. Thereafter, any such agreement is "declared against public policy and void, unless all money paid thereunder is handled . . ." as provided in Chapter 436. Criminal sanctions and injunctive measures are also provided for where the chapter is violated. Section 436.070, 436.080.

We are well aware of the rule that ". . . one of the cardinal principles of construing remedial legislation is that courts are to consider the evil sought to be cured and 'to make such construction as shall suppress the mischief, and advance

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the remedy and to suppress subtle inventions and evasions for the continuance of the mischief'." B-W Acceptance Corporation v. Benack, (Mo. App., 1967) 432 SW 2d 215, 218.

Unfortunately, we have before us a question which encompasses all pre-October 1965 prearrangement funeral contracts without having those contracts before us. However, your clarifying statement concerning the contracts to which you refer describes them as ones under which "the funds collected. . . were deposited in the trust fund maintained in an institution or corporation other than those specified in the present Chapter 436 . . ." and asks whether the funds may continue to be held in such manner, "in accordance with the contract and trust indenture executed prior to 1965." Limiting this opinion to the contracts you describe, we believe that an affirmative answer is required for the reasons hereinafter stated.

A well established rule of statutory construction is that legislative enactment are held to operate prospectively unless the contrary intent is shown clearly and unequivocally. In the case of Atchison v. Retirement Board, 343 SW 2d 25, the Supreme Court of Missouri quoted approvingly from the case of State ex rel Heaven v. Ziegenhein, 144 Mo. 283, 45 SW 1099, as follows, l.c. 32:

"\* \* \*The rule is that legislative enactments are held 'to operate prospectively, and not otherwise, unless the intent that they are to operate in such an unusual way, to wit, retrospectively, is manifest upon the face of the statute in a manner altogether free from ambiguity.' \* \* \*"

Section 436.010 reads in part as follows:

"Any agreement, contract or plan requiring the payment of money by a purchaser in a lump sum or in installments, which is made or entered into with any person . . . who, in consideration thereof, agrees to provide for the final disposition of a dead human body, . . . wherein . . . the funeral . . . is not immediately required, is hereby declared against public policy and void, unless all money paid thereunder is handled in accordance with the provisions of Sections 436.010 to 436.080, and subject to the terms of a written agreement not in conflict herewith . . . A seller shall not be entitled to enforce any contract made in violation of Section 436.010 to 436.080, but the purchaser or his heirs, or legal representatives, shall be entitled to recover all amounts paid to the seller under any contract made in violation hereof, and all amounts paid, whether or not paid to the seller, to any fund or for any investment, debenture, security, or contract in connection with the seller has violated the provisions of Sections 436.010 to 436.080, together with a reasonable attorney's fee therefor."

Notwithstanding the obviously salutary purposes of that section and those which follow it, it is our opinion that the Legislature meant for Chapter 436 to operate only prospectively; that is, to control only those prearranged funeral plans entered into after the effective date of the chapter regardless of whether

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such plans were fully paid at the time they were entered into or are still being paid by installments.

In State ex rel. Clay Equipment Corporation v. Jensen, (Mo. Supp. 1963), 363 SW 2d 666, the Supreme Court of Missouri was required to interpret a newly enacted statute which declared that any foreign corporation not licensed to do business in this state would be held to be doing business if it committed a tort in Missouri. The statute also authorized service of process upon the Secretary of State as agent for the foreign corporation. The specific issue presented was whether the statute applied to a suit instituted after its effective date but arising out of a tort which pre-dated the statute. There the Court said, l.c. 669-670:

"We think that subsection 2, of Section 351.630 RSMo 1959, as amended Laws 1961, p. 257, VAMS, evidences a clear intention on the part of the Legislature that the statute shall operate prospectively only. It expressly says: 'If a foreign corporation commits a tort.' This statement points to a happening in the future. The statute does not say, 'If a foreign corporation has committed a tort at sometime in the past, or before, this statute goes into effect'."

\* \* \* \*

"Further, as a general rule, statutes are construed to operate prospectively unless the legislative intent that they be given retrospective or retroactive operation clearly appears from the express language of the acts, or by necessary or unavoidable implication. . ."

We do not believe that the language of Section 436.010 contains any such "necessary or unavoidable implication. On the contrary, it appears to evidence a contrary intent. Note that Section 436.010 declares the prearrangement plans null and void unless all money paid thereunder "is handled in accordance with Section 436.010 to 436.080." Likewise, that and subsequent sections condemn contracts "made in violation of Sections 436.010 to 436.080."

In view of the fact that these sections did not exist prior to October 13, 1965, and in view of the fact that, as in the Jensen case, supra, the statute speaks in terms of the future (i.e., "Any agreement. . . which is made or entered into . . .," not, "Any agreement. . . which has been made . . ."), it is our opinion that Chapter 436 was intended to control and govern only those pre-arranged funeral plans which were entered into after the effective date of the chapter.

#### CONCLUSION

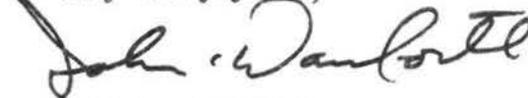
It is the opinion of this office that Sections 436.010 through 436.080, RSMo Supp. 1967, neither prohibit nor authorize the sale of credit life insurance in connection with installment purchases of prearranged funeral plans; and that, therefore, sale of such insurance policies are permitted, provided that all sta-

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tutory requirements relating to the sale of such insurance are met. It is further the opinion of this office that Sections 436.010 through 436.080 govern the handling and investing of money collected only under prearranged funeral plans entered into after the effective date of those sections, October 13, 1965.

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Albert J. Stephan, Jr.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General