

Opinion No. 45-4697

April 24, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. R. F. Apodaca Superintendent of Insurance State Corporation Commission
Santa Fe, New Mexico

{*52} Replying to your letter of April 21, 1945 in which you refer to and enclose a copy of a letter from Mr. Otto Friedrichs, Attorney at Law, Denver, Colorado.

I have searched the insurance code and general index of our compiled statutes and Supreme Court Reports and have not found anything in the nature of prohibition as to the writing of insurance contracts pertaining to the payment of funeral services or expenses pertaining to the burial of human bodies. In 68 American Law Reports Annotated, I found the following statement pertaining to the above contracts:

"The question as to the validity of contracts entered into before death, in relation to burial or cremation or funeral services, has not been directly passed upon by the courts."

In 29 American Jurisprudence, I found the following statement:

"Ordinarily, the person entitled to recover a funeral benefit or burial insurance is the executor or administrator of the insured, but the beneficiary of a contract which provides that at the death of the insured, a certain sum shall be paid to a certain named undertaker, his heirs or assigns, for burial of the insured, is the undertaker."

In the case of Robbins V. Hennessey (1912) 86 Ohio St. 181, 99 N. E. 319, the Constitutionality of a statute was attacked on the ground that it prohibited the insured or the beneficiary, after the policy had been issued, from assigning the same to anyone whom the insured or the beneficiary desired. The court held the statute unconstitutional.

If and when the above mentioned insurance company submits its proposed contract, the question will arise as to whether the mortician will be in a position to claim an insurable interest under the policies.

I found the following in 31 C. J. at page 967:

"Ordinarily a person may not take out insurance for the burial of another, unless he is under a legal obligation to pay the latter's burial expenses."

By THOS. C. McCARTY,

Asst. Atty. General