Indiana, would be entitled to such burial allowance upon a claim properly filed with the county authorities of the county in which he maintained such permanent residence.

OFFICIAL OPINION NO. 10

January 29, 1952.

Honorable Frank J. Viehmann
Insurance Commissioner of State of Indiana
State House
Indianapolis, Indiana

Dear Sir:

I have before me your request for an official opinion concerning contracts offered for sale purporting to be membership contracts in an automobile club. You ask "whether or not the services and indemnification or reimbursement offered constitute the making of insurance or an insurance contract."

As set out in your letter, a contract does not take the form of a policy contract. As stated by you, the papers constituting the contract are in the form of a brochure, a membership card and a letter sent by the club to each purchaser, copies of which are all set out in your letter. It is impractical to embody in this opinion copies of such papers.

The papers and the method followed are quite informal, general and indefinite. The arrangement contemplated, however, would seem to constitute a contract between the club and the member. Upon making a down payment and agreeing to pay the balance at designated times, the purchaser becomes a member of the club and entitled to receive certain "service and protection."

This service and protection includes reimbursement for "emergency mechanical aid and tire change," reimbursement for "tow-in service," reimbursement for "accident expense aid," and reimbursement for "defending property damage claims."

In section 3 of chapter 162, Acts of 1935 (Burns' Indiana Statutes Annotated, section 39-3203), insurance is defined as follows:

> " 'Insurance' means a contract of insurance or an agreement by which one party, for a consideration, promises to pay money or its equivalent or to do an act valuable to the insured upon the destruction, loss or injury of something in which the other party has a pecuniary interest, or in consideration of a price paid, adequate to the risk, becomes security to the other against loss by certain specified risks; to grant indemnity or security against loss for a consideration."

In 1934, which of course was prior to the enactment of the statute just referred to, the Attorney General of Indiana gave an opinion dealing with a similar situation. I refer you to the opinion dated May 3, 1934, found at page 252 of the Opinions of the Attorney General for the year 1934. In that opinion is a rather full discussion as to what constitutes insurance and concludes that certain features of a so-called "automobile club policy" partake of the nature of insurance. I believe the discussion, reasoning and conclusion in that opinion are pertinent to the question presented in your letter. I quote briefly from the opinion as follows:

> "In the light of these and other similar definitions it very clearly appears that the provisions of the policy referred to in this question constitute nothing more nor less than insurance contracts.
>
> "The fact that some of the provisions contained in the same instrument are not in the nature of insurance contracts does not take away from the others their insurance character. Therefore, it is my opinion that the several provisions relating to funds for repayment to the member of moneys laid out and expended by him for repairs, towing and other emergency matters connected with motoring constitute insurance contracts apart from the other provisions contained in the policy."

It appears from your letter that the club referred to undertakes to do certain things which do not constitute insurance. With reference to the undertaking concerning bail bonds, attention is called to section 20, chapter 338, Acts 1947 (Burns' Indiana Statutes, section 47-2308a), providing that a motor club, upon complying with the provisions of the Act, may issue

membership cards to its members containing a bail bond guarantee up to $1000. By those provisions it does not seem that the legislature regarded such bonds as being included in insurance. While there are included matters not constituting insurance, it is my opinion that the arrangement set out in the papers, whereby the club undertakes to pay the members money for expenses incurred by them for road services including "emergency mechanical aid and tire changing," "tow-in service," and "accident expense aid," constitute the making of insurance and such undertakings on the part of the automobile club are insurance contracts apart from the other things which the club undertook to do for its members.

The statement in the brochure as follows: "not an insurance policy" can have no legal effect if the arrangement as set out in the papers does in fact and in law, as we have concluded, constitute an insurance contract. Whether it is actually an insurance contract is determined by the effect under the law of the provisions of the contract and not by the name or characteristics attributed to it by the club.

OFFICIAL OPINION NO. 11

January 30, 1952.

Honorable Frank T. Millis
Auditor of State of Indiana
State House
Indianapolis, Indiana

Dear Sir:

Your letter of January 19, 1952, has been received requesting an opinion on the following question:

> "I respectfully request your official opinion as to whether or not a salary change to a lesser amount for a judge of the circuit court pursuant to Chapter 129 Acts 1949 is in conflict with Section 13, Article 7 of the Constitution. This question is raised because three judges are in circuits where the population has decreased to the extent that according to Chapter 129 Acts 1949 the circuit is in the next lower pay bracket."