

**Opinion No. 34-815**

October 11, 1934

**BY:** E. K. NEUMANN, Attorney General

**TO:** Honorable R. W. Heflin, Special Assistant, State Bank Examiner, Santa Fe, New Mexico.

{\*158} In your letter of October 10, 1934 you enclose certain literature of the People's Burial Association, Inc., of Portales, New Mexico. You wish to know if this company should come under the State Blue Sky or Insurance Department.

It appears from the literature submitted that this company is a mutual benefit association organized for the purpose of paying the burial expenses of its members up to a certain limited amount, for which service a monthly payment is required during the life of its members.

In my opinion this company is engaged in the insurance business within the meaning of our statute on that subject. Section 71-101 of the 1929 Code defines "insurance" as "any form of insurance, bond or indemnity contract the issuance of which is legal in the State of New Mexico." Contracts of the kind entered into by this company with its members have been held to be insurance contracts. See 1 Couch on Insurance, Section 32; *St. vs. Willett*, 171 Ind. 296, 23 L.R.A. (NS) 197, 86 N.E. 68; *State ex rel Coleman vs. Wichita Mutual Burial Assn.* 73 Kan. 179, 84 p. 757; *Ruto vs. Italian Burial Casket Co.*, 158 A 657, 104 Pa. Super 288.

In view of the above I think that the People's Burial Association should comply with the insurance laws of this state and be subject to the supervision of our Insurance Department.

By: QUINCY D. ADAMS,

Asst. Attorney General