

and documents are on file in said office, controlling board releases, and the tabulation of bids received on this project.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3104.

CEMETERY ASSOCIATION—SALE OF LOTS FOR BURIAL PURPOSES—INSTALLMENT BASIS—PURCHASER TO PAY SPECIFIC AMOUNT EACH WEEK—TWENTY YEARS—IF PURCHASER SHOULD NOT SURVIVE TWENTY YEAR PERIOD—ASSOCIATION TO DELIVER DEED TO LEGAL REPRESENTATIVE—NO FURTHER PAYMENT—INSURANCE—SEE SECTION 665 G. C.

*SYLLABUS:*

*Where a cemetery association sells lots for burial purposes upon the installment basis, the purchaser to pay a specific amount each week so long as he shall live, and in any event not more than twenty years, provided, however, if the purchaser should not survive the twenty-year period the association shall be required to execute a deed to his legal representative without further payment at the time of his death, the transaction is a contract substantially amounting to insurance within the meaning of Section 665, General Code.*

COLUMBUS, OHIO, October 18, 1938.

HON. ALFRED A. BENESCH, *Director of Commerce, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter requesting my opinion on the following:

“A cemetery association, organized not for profit under the laws of the State of Ohio, desires to sell lots for burial purposes only (not for investment) upon the installment basis, the purchaser to pay a specified sum per week so long as he shall live, and in any event not more than twenty years, provided, however, that if the purchaser should not survive the twenty-year period, the association shall be required to

execute a deed to his legal representatives at the time of his death.

I should like to know whether a contract of this character constitutes a form of insurance, and if so, whether the cemetery association is required to comply with the provisions of the insurance laws of Ohio."

Although I am unable to find any adjudicated cases in Ohio pertaining to the question presented by you, I do find that the Supreme Judicial Court of Massachusetts considered a similar question in *Attorney General vs. Osgood Co.*, 249 Mass. 473. In that case, a Massachusetts corporation engaged in the business of selling household furniture on the installment plan, provided in a contract of sale called a "lease" the following clause:

"In case of the death of the person signing this lease before the whole amount of the lease is paid we will receipt the balance due us on this account in full, \* \* \*."

The court, in concluding that the above mentioned lease constituted a contract of insurance, held as follows:

"The cancellation of the debt is the equivalent of the payment of money to the estate of the customer. The transfer of title to the personal property delivered on lease is a right valuable to the customer. The cancellation of the debt and the transfer of title to the personal property spring out of the agreement and are in performance of its terms. The customer pays to the defendant the consideration for the doing of these things in the money handed to it as deposit and as the partial payments made from time to time. The cancellation of the debt and the transfer of the title to the personal property occur upon the death of the customer. That loss of his life is plainly something in which the customer has an interest. Every element of the statutory definition of insurance is present."

There is no statutory definition of insurance in Ohio; however, the courts of this state have defined insurance substantially like the statutory definition of insurance considered by the court in the Osgood case. *The Ohio Farmers Ins. Co. vs. Cochran*, 104 O. S. 427; *State vs. Railway*, 68 O. S. 9.

Section 665, General Code, provides in part as follows:

“No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with.”

The foregoing section was considered in Opinions of the Attorney General for 1928, Vol. I, page 424, and it was held by the then Attorney General as follows:

“Where a furniture company in Ohio sells furniture on the installment plan and, at the time of the sale, makes an agreement with the purchaser that, in the event the purchaser dies before the furniture is completely paid for, the company will cancel the debt for such furniture and give the purchaser’s estate a receipt in full for the balance of the account remaining unpaid, the transaction is a contract ‘substantially amounting to insurance’ within the meaning of Section 665, General Code.”

It is quite apparent that a contract need not be one of strict insurance in order to come within the inhibition found in Section 665, General Code. It is sufficient if the contract is one “substantially amounting to insurance.”

In view of the Osgood case, *supra*, and the 1928 opinion, I have no hesitancy in concluding that where a cemetery association sells lots for burial purposes upon the installment basis, the purchaser to pay a specific amount each week so long as he shall live, and in any event not more than twenty years, provided, however, if the purchaser should not survive the twenty year period, the association shall be required to execute a deed to his legal representative without further payment at the time of his death, the transaction is a contract substantially amounting to insurance within the meaning of Section 665, General Code.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*