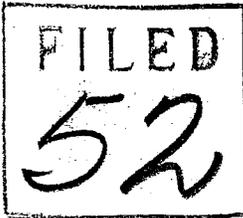


INSURANCE: Section 376.360, RSMo 1949, relative to annual distribution of dividends on participating policies, applies to foreign life insurance companies licensed in Missouri.



March 15, 1954

Honorable C. Lawrence Leggett  
Superintendent of the Division of Insurance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Leggett:

The following opinion is rendered in reply to your request which may be restated in the following language:

Are the mandatory provisions of Section 376.360, RSMo 1949, which provide for the annual distribution of dividends apportioned to participating policies issued by life insurance companies, applicable to a foreign life insurance company licensed to conduct its business in this State?

For the purpose of this opinion it is not necessary to incorporate herein more than paragraphs numbered 1 and 6 of Section 376.360, RSMo 1949, a statute of unusual length, which paragraphs provide:

"1. All life insurance companies organized under the laws of this state shall ascertain and distribute annually, and not otherwise, beginning not later than the end of the third policy year, the proportion of any surplus accruing

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upon every participating policy or contract issued on or after January 1, 1946, entitled as herein provided to share in such surplus. Upon the thirty-first day of December of each year, or as soon thereafter as may be practicable, every such company shall well and truly ascertain the surplus earned by it during the year.

\* \* \*

"6. No stock or stock and mutual life insurance company organized under the laws of this state shall issue, on or after January 1, 1946, any participating policy or contract which does not by its terms give the right to participate in the divisible surplus earnings of such company as provided herein. No mutual life insurance company organized under the laws of this state shall issue, on or after January 1, 1946, any policy or contract, except as herein provided, which does not by its terms give the right to participate in the divisible surplus earnings of such company as provided herein. \* \* \*"

In the two above quoted provisions from Section 376.360, RSMo 1949, it is readily apparent that a positive legislative policy is stated and directed to all life insurance companies organized under the laws of Missouri and which are subject to said statute. Does the fact that language of the statute, on its face, is addressed to domestic life insurance companies justify a contention that life insurance companies of a foreign state, licensed to do business in Missouri, are not subject to its provisions? Such question should receive a negative answer when we consider the following language found in Section 375.030, RSMo 1949, a statute applicable to all foreign life insurance companies licensed to transact business in Missouri:

"1. No individual or association of individuals, under any style or name, shall be permitted to do the business mentioned in this chapter within the state of Missouri, unless he or they shall first fully comply with all the provisions of the laws of this state governing the business of insurance. \* \*"

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In passing upon the applicability of local laws to foreign insurance companies conducting their business in Missouri, the Supreme Court of Missouri spoke as follows in the case of *Head v. Insurance Company*, 241 Mo. 403, l.c. 413:

" \* \* \* that foreign insurance companies admitted to carry on their business in this State, can only contract within the limits prescribed by our statutes, and that in the conduct of the business under the license granted by this State, they 'shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers.' \* \* \*"

In referring to the decisions of Missouri's appellate courts in relation to the applicability of Missouri's laws to foreign insurance companies, the Court's opinion in the above cited case continued as follows at 241 Mo. l.c. 413:

"The effect of these decisions is to write into every insurance contract made by a foreign insurance company, so licensed, in this State all of the provisions of the statutes of this State appurtenant to the making of such contract, and which define and measure the reciprocal rights and duties of the parties thereto. These statutes are declaratory of the public policy of this State, and inhibit the doing of the business of insurance in this State by any corporation contrary to their regulations by annulling all the stipulations which offend the provisions of the statutes. \* \* \*"

No ambiguity has been discovered in the language of Section 376.360, RSMo 1949, which provides for the annual payment of dividends accruing and declared upon participating policies, and payment of such dividends on a five-year basis is not contemplated or authorized by the statute.

#### CONCLUSION

It is the opinion of this office that the mandatory provisions of Section 376.360, RSMo 1949, which provide for the

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annual distribution of dividends apportioned to participating policies issued by life insurance companies are applicable to foreign life insurance companies licensed to conduct their business in this State.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON  
Attorney General

JLO:M:lw