

**FOREIGN INSURANCE COMPANIES:**

Foreign insurance companies are not required to comply with either Sec. 5809 or Sec. 5826, R.S. Mo. 1939, with respect to capital stock being paid up in full, if the State of its domicile does not so require. A foreign insurance company does not violate the terms of Sec. 6035, R.S. Mo. 1939, if it holds some of its own stock, not absolutely or as collateral, but holds the same merely for conversion purposes of Preferred stock into Common stock or Common stock into Preferred stock.

June 19, 1946

Honorable Owen G. Jackson  
Superintendent of Insurance  
of Missouri  
Jefferson City, Missouri

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Dear Mr. Jackson:

This will acknowledge your letter requesting an opinion from this Department.

Your letter is as follows:

"A life insurance company organized and doing business under the laws of the state of South Carolina has applied for license to do business in this state. It has duly submitted to this Department a proper certificate showing that it has complied with the laws of South Carolina, and is authorized to, and is doing business in that state.

"Another submission in the form of a copy of this last Annual Statement reveals that the company owns approximately 7,500 shares of its own capital stock. It also shows that although the whole of the capital stock has not been paid up and is not now outstanding, \$100,000.00 of its capital stock has been paid up and is outstanding.

"Is it necessary that this foreign insurance company comply with the same requirement prescribed for companies organized under the laws of this state, with specific reference to that portion

of Sections 5809 and 5826 R.S. Mo. 1939 providing that the full amount of the capital stock named in the Articles of Association shall be paid up and outstanding before it may be licensed?

"Your opinion on the above and foregoing is respectfully requested."

In a later communication with this Department, Mr. Ralph C. Lashly, Counsel for your Department, quotes a letter from Mr. E. F. Averyt, President of the insurance company involved, showing the manner in which its Common stock is being held. Said quoted letter is as follows:

"Mr. Ralph C. Lashly, Counsel  
Insurance Department  
State of Missouri  
Jefferson City, Missouri

Dear Mr. Lashly:

'In compliance with your letter of April 25th, we are herewith enclosing specimen copy of Series 'A' Common Stock certificate and specimen copies of each of the Preferred Stock certificates.

'The 436 shares of 6% Preferred with a par value of \$100.00 each have a right to convert into 10 shares Series 'B' Common Stock for each share of Preferred Stock. The 554 shares of 5% Preferred with a par value of \$100.00 each do not have any conversion rights. Therefore, 4,360 shares of the 11,850 shares of no par Common are reserved for the conversion rights of the 6% Preferred Stock.

'It was originally intended to sell the entire 990 shares of Preferred Stock with conversion rights which would have hypothecated 9,900 shares of the 11,850 shares of the no par Common Series 'B'

assigned to the company, but it was later decided to sell 554 shares of the Preferred Stock without the conversion rights. The balance of 1,950 shares of the Series 'B' Common was to be held for similar conversion rights in case it was decided to increase the company's capital with additional Preferred Stock issues.

'The number of shares of Series 'B' Common now being held by the company that is not hypothecated for the conversion rights of Preferred Stock, that is, 6,490 shares, is still being held for the purpose of conversion rights to future issues of Preferred Stock if and when the company decides to increase its capital stock.

Very truly yours,

E. F. Averyt  
President."

The request for this opinion, in the light of your letter to this Department and the quoted letter of Mr. Averyt, necessarily brings up for construction Sections 5809 and 5826, R.S. Mo. 1939, and also our Section 6035, R.S. Mo. 1939, as to whether said Sections apply to foreign insurance companies, upon an application by such companies for certificate of authority to do business in this State.

Sections 5809 and 5826, are what we may very appropriately call "organization" statutes, referring only and having authority and effect only on, insurance corporations organized under the laws of Missouri. Section 5809 refers specifically in the early lines of said Section to Section 5803, R.S. Mo. 1939, with respect to the declaration to be filed under said Section 5803 by persons designated as incorporators of an insurance company in this State. Said Section 5803 in turn refers to Section 5800, Article 2, Chapter 37, R.S. Mo. 1939, which prescribes the procedure for the formation of an insurance company.

A careful reading of these statutes cited will disclose that they refer only to and regulate only the formation of insurance corporations in the State of Missouri under its laws.

Section 5826, R.S. Mo. 1939, specifies the amount of capital that any joint stock or stock and mutual insurance companies formed under the provisions of Article 2, Chapter 37, for the purposes mentioned in said Section 5800, must provide for in their articles of incorporation.

The statement is made in your letter, and is borne out by Mr. Averyt's copied letter, that although the whole of the capital stock of the foreign insurance company has not been paid up and is not outstanding, the company does have \$100,000.00 of its capital stock paid up and outstanding. Growing out of such statement of fact you ask, "is it necessary that this foreign insurance company comply with the same requirement prescribed for companies organized under the laws of this State with specific reference to that portion of said Sections 5809 and 5826, R.S. Mo. 1939, providing that the full amount of the capital stock named in the articles of association shall be paid up and outstanding before it may be licensed in this State." We think, under the terms of our said Sections 5809 and 5826, they being what we have heretofore designated "organization" statutes referring only to insurance corporations organized under the laws of Missouri, that the question of not having its full capitalization paid up does not bear upon that company's right to a certificate in this State, if it complies with all of our statutes required to be complied with by foreign insurance companies in order to obtain such certificate. If the State of South Carolina granted a certificate of authority to this insurance corporation when organized under its laws to transact insurance business in that State with that amount of capital paid up and outstanding, notwithstanding the full amount of its capitalization as provided in its articles of association has not been paid up and outstanding, neither our Section 5809 or Section 5826, would prevent such foreign insurance company from being licensed in this State.

That part of our said Section 6035, R.S. Mo. 1939, Article 10, Chapter 37, which is a part of our

General Statutory Provisions applying to all insurance companies, foreign as well as domestic, respecting the holding by an insurance company of its own stock, which here constitutes a part of the question we are now considering, is as follows:

"No insurance company shall, directly or indirectly, purchase or hold, either absolutely or as collateral, its own stock, after the same has been once issued: \* \* \*".

In the quoted letter of Mr. Averyt it is stated that the holders of the 6% Preferred par value stock have the right to convert such stock into Common stock at the ratio of ten shares of Common stock for one share of such Preferred stock, and that the Common stock is held by the company for such conversion purpose.

Our said Section 6035, R.S. Mo. 1939, says that no insurance company "shall, directly or indirectly, purchase or hold, either absolutely or as collateral, its own stock, after the same has been once issued."

Since the foreign insurance company in question holds its own stock, in whatever amount it may be, for the purpose of conversion into other stock, we do not perceive how it would be holding such shares in violation of the terms of said quoted part of our said Section 6035, R.S. Mo. 1939. Resting the matter upon the language quoted in our said Section 6035, it was the evident intention of the Legislature in incorporating such language into said Section 6035, to prevent insurance companies from holding their own stock outright. It appears to be the case here that the Preferred par value stock held by the foreign company, being considered to be held for conversion, is dormant and inactive and not issued in the sense that our said Section 6035 has in mind.

"Conversion" is defined in Webster's New International Dictionary, definition 1 c, page 582, as: "From one thing to another by substitution."

It would thus appear that the foreign insurance company in question having been permitted to organize and

carry on its business in the State of its domicile without having the full amount of its capital paid in, it is not required to comply with the requirements prescribed for insurance companies organized under the laws of this State as are set forth in Sections 5809 and 5826, R.S. Mo. 1939, which require the full amount of capital to be paid up before being licensed. It also appears that said foreign insurance corporation is not proceeding contrary to our said Section 6035, Article 10, Chapter 37, R.S. Mo. 1939, on account of its owning and holding a block of its own stock for conversion purposes.

In the case being considered, however, it appears that the company in question has complied with the laws of its domicile, and that it need not comply with Sections 5809 and 5826, R.S. Mo. 1939, in order to obtain a certificate to do business in this State, and that it is not violating the terms of Section 6035, Article 10, Chapter 37, R.S. Mo. 1939, in holding a block of its stock for conversion purposes.

CONCLUSION.

It is, therefore, the opinion of this Department that the insurance company in question, to-wit: Colonial Life & Accident Insurance Company, Columbia, South Carolina, having complied with the laws of the State of its domicile by paying up at least \$100,000.00 of its capitalization, although not all of its authorized capital stock has been paid in full, said company need not comply with Sections 5809 and 5826, R.S. Mo. 1939, in order to obtain a certificate to do business in this State, for the reason said Sections apply only to companies organized under the laws of this State, and that said insurance company is not violating the terms of Section 6035, Article 10, Chapter 37, R.S. Mo. 1939, in reserving a block of its own stock to take care of the conversion rights of Preferred stockholders.

Respectfully submitted,

APPROVED:

GEORGE W. CROWLEY  
Assistant Attorney General

J. E. TAYLOR  
Attorney General

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