

INSURANCE-REINCORPORATION
OF COMPANIES:

Insurance companies organized under the provisions of Art. III, Chapter 37, R.S. Mo. 1939, may reincorporate under the provisions of Art. IV, Chapter 37, R.S. Mo. 1939, to make insurance on the stipulated premium plan.

February 19, 1948



Honorable Owen G. Jackson
Superintendent, Division of Insurance
Department of Business and Administration
Jefferson City, Missouri

Dear Superintendent Jackson:

This will acknowledge your request for an opinion, respecting the re-incorporation as a stipulated premium plan insurance company under the provisions of Article IV, Chapter 37, R.S. Mo. 1939, by an insurance company originally organized under the provisions of Article III, Chapter 37, R.S. Mo. 1939.

Your letter is as follows:

"Will you please advise this Division concerning the right of an insurance company organized under the provisions of Article III, chapter 37, R.S. Mo. 1939, to reincorporate as a stipulated premium plan or stock insurance company under the provisions of Article IV, chapter 37, R. S. Mo. 1939.

"Your records will indicate that under date of June 26, 1946 this question was presented to you in connection with the application for such reincorporation by the National Savings Life Insurance Company. The request for this opinion was subsequently withdrawn."

Article IV, Chapter 37, R.S. Mo. 1939, was originally passed as Senate Bill 283, Laws of Missouri, 2899, page 360. The Act has remained in the several revisions of our statutes and now remains in the revision of 1939, almost precisely in the same language and provisions employed in the sections as they were constituted when the Act was originally passed.

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Section 5886, dealing with domestic companies, which is under specific discussion here, was numbered Section 17 in the original act, Laws of Missouri, 1899, page 265.

Section 5890, of said Article IV, dealing with foreign companies was, in the original Act, Laws of Missouri, 1899, numbered Section 20, pages 266, 267.

The subject of your request for this opinion requires the construction of the terms of Section 5886 of said Article IV, particularly with respect to the wording used in said Section 5886 composing the phrase "existing or doing business in this state at the time this article takes effect".

That part of said Section 5886 pertinent to the preparation of this opinion is as follows:

"Any domestic life or accident corporation, company or association existing or doing business in this state at the time this article takes effect, may, by the vote of a majority of its board of directors or trustees, accept the provisions of this article and amend its articles of incorporation to conform to the same, so as to cover and enjoy any and all the provisions and privileges of this article the same as if it had been originally incorporated thereunder, and it shall file such amended articles of incorporation in the office of the secretary of state, a certified copy of which shall be filed with the insurance department, and shall thereafter perpetually enjoy the same and be deemed to have been incorporated under this article.
* * *".

That part of Section 5890, R. S. Mo. 1939, pertinent to the preparation of this opinion is as follows:

"No corporation, company, association or society organized under the laws of any other state or territory of the United States, or the District of Columbia, or foreign companies shall transact business under the provisions of this article until it has received from the superintendent of insurance a certificate of authority to do business in this state, a duplicate of which shall be filed in his office.
* * *".

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Section 5890, in the original Act, Section 20, pages 266, 267, Laws of Missouri, 1899, respecting foreign insurance companies, is here quoted and referred to as a comparative method to demonstrate that the Legislature did not intend by the terms of said Section 5886 to require of domestic insurance companies desiring to reincorporate from existence under said Article III to a company under said Article IV to carry on an insurance business under the stipulated premium plan, greater burdens than are placed upon foreign insurance companies originally organized under said Article III desiring to reincorporate under said Article IV to carry on insurance business under the stipulated premium plan.

The primary rule of construction of statutes announced and followed by the Supreme Court of Missouri, and pronounced and followed in every jurisdiction, so far as we are advised, is that a statute must be construed to give effect to the intent of the Legislature in passing the Act. 59 C.J., pages 948-949, states the rule generally, as follows:

"As the intention of the legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the court shall, by all aids available, ascertain and give effect, unless it is in conflict with constitutional provisions, or is inconsistent with the organic law of the state, to the intention or purpose of the legislature as expressed in the statute.
* * *".

The further rule of construction is followed, without exception, by Courts and text writers, that the spirit rather than the letter of the statute must be the guiding means with respect to the construction of a statute, to arrive at the intention of the Legislature. 59 C.J., pages 964-966, states the rule as follows:

"In pursuance of the general object of giving effect to the intention of the legislature, the courts are not controlled by the literal meaning of the language of the statute, but the spirit or intention of the law prevails over the letter thereof, it being generally recognized that whatever is within the spirit of the statute is within the statute although it is not within the letter thereof, * * *".

One Missouri case, among many cases adjudicated by our Supreme Court, is the case of Perry vs. Strawbridge, et al., 209-

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Mo. 621, upholding the above quoted rule of construction. That case, l.c. 639, quoting Black on Interpretation of Laws, states the following:

"* * * 'A statute should be construed with reference to its spirit and reason; and the courts have power to declare that a case which falls within the letter of a statute is not governed by the statute, because it is not within the spirit and reason of the law and the plain intention of the Legislature.' * * * ".

The Court at the end of the quote further states:

"* * * This rule finds support in case after case as we read them in the books."

It is, therefore, reasonable to say, as we view the two sections--5886 and 5890--, that the Legislature did not intend to discriminate against domestic companies under Section 5886 and in favor of foreign companies under Section 5890, which permits foreign companies to reincorporate and become Article IV companies regardless of when or under what circumstances they may have been organized, while under Section 5886 domestic companies are required to be actually existent or transacting business at the time Article IV took effect before they could change their corporate existence in any separate case from that of a company doing business under some other plan, to a company authorized to do business under the stipulated premium plan.

Besides, we have Section 5894 in the same Article IV of Chapter 37, R.S. Mo. 1939, following said Section 5886, which, in part, is as follows:

"Any life or accident corporation, company or association organized under the laws of this state may avail itself of the rights and privileges accorded by section 5886, R.S. 1939, by compliance with the terms of said section, and on approval by the superintendent of insurance, * * * ".

Considering the terms of the three sections, 5886, 5890 and 5894, one may reach the reasonable conclusion that it was intended for all three of said sections to harmonize with respect to permitting the reincorporation of insurance companies organized under other articles or chapters either foreign or domestic, to have and exercise the same privilege of converting their respective organizations

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into companies to transact insurance business on the stipulated premium plan under said Article IV, and that there is no conflict between the three sections.

That part of said Section 5894 quoted above gives the positive and absolute right to any life or accident insurance company organized under the laws of this State to reincorporate under the terms of said Section 5886, and to avail itself of all the rights and privileges accorded to domestic companies whether organized before or after said Article IV, Chapter 37, R.S. Mo. 1939, took effect.

We think it does not detract from or change the terms of said Section 5894, part of which is hereinabove quoted, because the latter part of said section adds in the conjunctive, the right to exercise certain other privileges after a domestic company has been reincorporated under the terms of said Section 5886 to transact business on the stipulated premium plan.

It clearly appears from the terms of said Section 5894 that any domestic company in this State organized at any time under Article III, Chapter 37, R.S. Mo. 1939, may change to a company authorized to transact business of insurance under the terms of Article IV of said Chapter 37.

CONCLUSION

It is, therefore, the opinion of this Department, considering the foregoing, including the statutes of this State, cited and quoted, that an insurance company organized under the provisions of Article III, Chapter 37, R.S. Mo. 1939, may avail itself of the rights and privileges accorded by Section 5886, R.S. Mo. 1939, by compliance with the terms of said Section, and on approval by the Superintendent of Insurance.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General