LIFE AND ACCIDENT INSURANCE: A domestic life or accident insurance corporation may, under the terms of Section 5886 and Section 5894, Article 4, Chapter 37, R.S. Mo. 1939, reincorporate to carry on insurance on the stipulated premium plan. The direction and handling of the business of such reincorporated insurance company must be done and performed by the board of directors of the reincorporated company.

October 12, 1948

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

10-13

Dear Superintendent Jackson:

This will acknowledge the receipt of your letter requesting the opinion of this Department as to the legality of the proceedings of Capital Mutual Association, a mutual insurance company located at Jefferson City, Missouri, to change its corporate entity and existence from a mutual insurance company on the assessment plan under Article 3, Chapter 37, R.S. Mo. 1939, to an insurance company on the stipulated premium plan, and to be reincorporated under the corporate name of Capital Reserve Life Insurance Company, pursuant to the provisions of Article 4, Chapter 37, R.S. Mo. 1939. Your letter is as follows:

> "We enclose herewith executed copy of the proceedings of the above named company in connection with amendments to its Articles of Incorporation and reincorporation as a stipulated premium company under Article IV of our law. We also enclose for your study and information a copy of the proposed by-laws of the new company.
>
> "Will you please advise this Division whether the proceedings are in compliance with our statutes and not in conflict with the Constitution of the State of Missouri or of the Constitution of the United States.
>
> "In passing upon the sufficiency of the enclosed Articles, it is assumed that you will give due consideration to the fundamental question of whether such a reincorporation from a mutual assessment company under Article III, to a stipulated premium company,

a stock company, under Article IV, is in fact permissible under our present statutes. The question arises as to whether the proceedure followed by the company is in reality for a reincorporation or an entirely new corporation. If a reincorporation, would action by members of the present association be necessary before the directors would be authorized to change the corporate structure? And should action by the Circuit Court also be necessary in such instance, since it was originally incorporated by decree of such court?

"The question also arises as to what disposition is to be made of the surplus in the expense and mortuary funds, and the rights of the various policyholders thereto, both those who go with the new corporation and those who elect to keep their old policies. And further, the problem of how to value the new outstanding insurance contracts, of rewriting all such contracts and the procedure to follow in case additional assessments are made seems important in this general picture for solution.

"In case this should be approved as an entirely new corporation, then it appears the question of acquiring the assets of the present association by a reinsurance agreement under Section 5859 would require some consideration.

"These and other pertinent questions have arisen in our minds in the consideration of this overall problem. Therefore, in addition to passing upon the sufficiency of the form of the Articles enclosed, we respectfully request that you render us an opinion covering the various points involved, in the request for approval of the Articles herein presented, and whether under the present law such reincorporation is permissible."

For our convenience, information and in the preparation of this opinion you have transmitted to us a certified copy of the proposed Articles of Incorporation of Capital Reserve Life Insurance Company in the nature of an amendment to the Articles

of Incorporation of the said Capital Mutual Association which said Articles were proposed, adopted and made effective by the action of a majority of the Board of Directors of Capital Mutual Association at a meeting of the Board of Directors of Capital Mutual Association held on the 21st day of May, 1948, to accept, and thereby did accept, the provisions of said Article IV and did thereby amend its Articles of Incorporation to conform to the provisions of said Article IV, so as to cover and enjoy any and all of the provisions and privileges of said Article IV the same as if the said Capital Reserve Life Insurance Company had been originally incorporated thereunder.

You also transmitted a copy of the proposed by-laws of Capital Reserve Life Insurance Company under which it will operate if and when it is so reincorporated under the terms of said Article IV, Chapter 37, R.S. Mo. 1939.

Your letter submits a number of questions which we will consider separately since each of them, while correlative with each other on the general subject of incorporation, or reincorporation of an insurance company under the terms of said Article IV, each requires, we think, separate consideration and the citation of different authorities and demands the application of different lines of reasoning. These submissions of questions for this opinion are not numbered serially, nor in fact, separately, in your letter, but we shall endeavor to paragraph them in order that this opinion, as to each of them, will be the more readily understood.

We will defer the answer to the question in paragraph 2 of your letter as to the constitutionality of the proceedings here being considered and reply to that question later in the opinion. In paragraph 3 of your letter you submit the question for our consideration whether "such a reincorporation from a mutual assessment company under Article III, to a stipulated premium company, a stock company, under Article IV, is in fact permissible under our present statutes." The answer to this question is in the affirmative. Sections 5886 and 5894 of said Article IV provide abundant and positive authority for the reincorporation of an Article III mutual insurance company into an Article IV company to do an insurance business on the stipulated premium plan by the acceptance by the Article III mutual company of the provisions of said Article IV in an amendment to the Articles of Incorporation of an Article III mutual company, according to the particular provisions of Sections 5886 and 5894, of said Article IV, and to become effective upon the approval by the Superintendent of Insurance. We considered this question and

gave you our opinion on February 19, 1948, that such reincorporation may be lawfully affected, in response to a renewed request from your Department for our opinion, a former request for an opinion on the subject having been previously withdrawn by you. We respectfully refer you to our said opinion of the date last mentioned, in confirmation of the affirmative answer here being given to the question.

Paragraph 3 of your letter next submits the following question: "The question arises as to whether the procedure followed by the company is in reality for a reincorporation or an entirely new corporation."

The certified copy of the Articles of Agreement of Capital Mutual Association as amended to reincorporate as Capital Reserve Life Insurance Company, supported by the copy of the by-laws of Capital Mutual Association, leave no doubt, it appears, that the scheme and plan proposed and effected was intended to be and is a reincorporation of the Article III mutual company into an Article IV stipulated premium company. The said Articles of Incorporation recite in detail the historical background of the existence of Capital Mutual Association as a mutual insurance company on the assessment plan organized and existing under and by virtue of the provisions of Article III, Chapter 37, R.S. Mo. 1939, and that Capital Mutual Association desires to reincorporate under the provisions of Article IV of Chapter 37, R.S. Mo. 1939, and Acts amendatory thereof, and particularly as provided in Section 5886 of said Revised Statutes of Missouri, 1939. It is further recited in the certified copy of said Articles of Incorporation that in the proceedings of the majority of the Board of Directors of Capital Mutual Association at its meeting held on May 21, 1948, they proposed to amend, and did amend, the Articles of Incorporation of Capital Mutual Association so as to conform said Articles of Incorporation to the provisions of Article IV, Chapter 37, R.S. Mo. 1939, and to cover and enjoy any and all of the provisions and privileges of said Article IV the same as if said Capital Mutual Association had been incorporated originally thereunder. And it is further recited therein, that for the purpose of carrying out and effectuating such reincorporation of Capital Mutual Association, the Articles of Agreement of said Capital Mutual Association "are hereby amended by adding thereto the following provisions:." Then follows as the amendment, the proposed Articles of Agreement of Capital Reserve Life Insurance Company. Nowhere in the record of the actions of Capital Mutual Association or in the recitation of its purpose and intention to reincorporate as an Article IV company is there the slightest indication or intimation that it intended to, or did, move in any manner toward the incorporation of a new corporation. It would

seem this would be sufficient upon which to predicate a fixed conclusion that these proceedings all signify a reincorporation of the Article III company into an Article IV company rather than incorporate an entirely new corporation. But in further proof that the purpose and intention of the movers in the amendment was to reincorporate rather than to originally incorporate, we refer to the contents of the proposed by-laws of the proposed Capital Reserve Life Insurance Company.

Article X of the proposed by-laws of Capital Reserve Life Insurance Company states that the Capital Reserve Life Insurance Company had heretofore been incorporated under the name of Capital Mutual Association under the provisions of Article III, Chapter 37, R.S. Mo. 1939, entitled, "insurance on the assessment plan." This was proper under the provisions of Section 5886 and constituted the admission of Capital Mutual Association of its former existence and that its future existence would be as a reincorporated company as and under an amendment to the Articles of Agreement of Capital Mutual Association to merge into and become known under the corporate name of Capital Reserve Life Insurance Company.

Also, in said Article X of the proposed by-laws of Capital Reserve Life Insurance Company, they assert that after the completed reincorporation of the Capital Mutual Association into Capital Reserve Life Insurance Company under the terms of said Article IV, as a stipulated premium company, they are merely changing their methods of doing business, but not changing the business itself, and that the former by-laws of Capital Mutual Association having become, under the law, a part of the policies issued by Capital Mutual Association when doing business on the assessment plan, such former by-laws of Capital Mutual Association are to be continued in full force and effect and shall govern the officers and agents of Capital Reserve Life Insurance Company in all the transactions relating to policies already written by Capital Mutual Association and remaining in force on the assessment plan. This, we believe, is in confirmation of the expressed intention for the change by amendment, of the Articles of Agreement of the Capital Mutual Association, an Article III company, to Capital Reserve Life Insurance Company, an Article IV company, to be a reincorporation of the old company under the new name and these statements offer satisfactory proof that this is what they did.

Were the proceedings here intended to result in the organization of a new Article IV corporation they would be confined exclusively to the provisions of Sections 5870 and 5871 of Article

IV, Chapter 37, R.S. Mo. 1939, respecting the number of persons associating themselves together for the formation of a new corporation according to Section 5870, and the contents of the Articles of Incorporation would have to show compliance with the terms of said Section 5871. The entire proceedings to organize a new corporation under Article IV would be entirely separate and distinct from any of the provisions of Sections 5886 and 5894 of said Article IV which provide for reincorporation of an existing company into an Article IV company. These things they have not done, nor have they by any of the proceedings of Capital Mutual Association or of the proposed Capital Reserve Life Insurance Company intimated that the object of the proceedings was to organize a new corporation. Indeed, before a new corporation could be organized and formed as an Article IV company under the facts here disclosed, the Article III assessment company would, of necessity, have to be liquidated, its affairs wound up, its existence be discontinued, its assets distributed among the members of the assessment company, and the corporation be dissolved. This has not been done, nor has any intimation been made in these proceedings or otherwise, looking toward that end.

Further observing the provisions of said Article X of said proposed by-laws of Capital Reserve Life Insurance Company, it is stated that the reincorporated company proposes to, and will, as Capital Reserve Life Insurance Company, continue and carry out the previous by-laws of Capital Mutual Association, respecting the policies remaining in force of Capital Mutual Association when and as it was operated as a mutual assessment company under the provisions of said Article III, and that the funds accumulated when said company was operating as an Article III company will be administered to the interest and for the benefit of the remaining assessment members if they so desire, provided; that any assessment member, of his own volition, desiring to change his policy from an assessment policy to a policy on the stipulated premium plan to be issued to him by Capital Reserve Life Insurance Company, may do so and receive his equitable share of the funds of the assessment company in the form of part payment on the premium, or premiums, on such stipulated premium policy. This, we believe, further carries out the purpose and intention of reincorporating the former Article III mutual company into an Article IV stipulated premium company, and that this becomes a binding agreement upon the reincorporated stipulated premium company, and also demonstrates that it is a reincorporated company in fact, and not a new corporation.

The next question submitted in paragraph 3 of your letter is: "If a reincorporation, would action by members of the present association be necessary before the directors would be authorized

to change the corporate structure?"

If this proceeding constitutes a reincorporation of the old Article III company into an Article IV stipulated premium company, and we believe it does, then the matter of the change and reincorporation is governed by the provisions of Section 5886, Article IV, Chapter 37, R.S. Mo. 1939, and, therefore, the policyholders as members of the present mutual association as such would not be authorized to take any part in the reincorporation of the old assessment company to become an Article IV company. Said Section 5886 states, in part, that any domestic life or accident corporation desiring to effect a reincorporation of another company into an Article IV stipulated premium company, 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 of the provisions of this article the same as if it had been originally incorporated thereunder." Section 5894, Article IV, Chapter 37, R.S. Mo. 1939, in giving further authority for such reincorporation does not change or in anywise depart from or alter the provisions of said Section 5886 as to who shall act for the company. Section 5894 refers specifically to said Section 5886 and the compliance therewith as necessary in order to effect the reincorporation provided for in said Section 5886. These sections furnish positive authority that a majority of the Board of Directors, or Trustees, of any company desiring to reincorporate under the terms of said Sections 5886 and 5894 may lawfully act for the company in that behalf without any action by the members of the present association.

The next question submitted in paragraph 3 of your letter is: "And should action by the Circuit Court also be necessary in such instance, since it was originally incorporated by decree of such court?"

We believe the fact that Capital Mutual Association was incorporated by the decree of a Circuit Court has nothing whatever to do with the question or proceedings of its reincorporation into an Article IV stipulated premium company. The decree of incorporation of a company by the Circuit Court of the county or city in which it is proposed to locate the chief office or place of business of the company, under Article III, Chapter 37, R.S. Mo. 1939, is authorized by the terms of Section 5857 of said Article III, but nowhere in said Article III do we find any authority for the Circuit Court granting the decree of incorporation to act in any matter of reincorporation of the company into an Article IV stipulated

premium company. Nowhere in said Article III do we find any provision for the Circuit Court to have jurisdiction of the dissolution of an Article III company. The matter of a dissolution would be left entirely to the disposition of the Superintendent of Insurance under the terms of Section 6052, R.S. Mo. 1939, and while he might lodge the proceedings for dissolution in the Circuit Court for good cause shown, he is not compelled to do so by the terms of said Article III. This is not a dissolution proceeding, however, and is only mentioned here for the reason that dissolution and winding up its affairs would be required of the old company in order to form a new corporation. The proceeding to reincorporate a previously organized insurance company into an Article IV stipulated premium company is left entirely to the terms of Sections 5886 and 5894.

It is generally recognized that a corporation in existence may reincorporate when it is authorized to do so by a special or a general statute, without becoming a new corporation. 14A C.J., page 1037, states this text on the principle:

> "* * * By statute the corporation may as matter of right reincorporate under the same name, and may enforce the right by a writ of mandamus; or it may take a different name. A corporation may reincorporate in the same state without becoming a new corporation. * * * ."

The above text under footnote 9, pages 1037 and 1038, cites cases decided by the United States Supreme Court, and the courts of numerous States of the Union. We will cite a few of such cases, and quote brief excerpts from such authorities on the point. In the case of Strahm vs. Fraser, (Cal.) 163 Pac. 680, the footnote states the holding of the Court as:

> "'It is well settled that the identity of a corporation is not destroyed, nor are its legal obligations obliterated, by the mere fact of reincorporation under the same or a different name. '."

In the case of People vs. Payn (N.Y.) 55 N.E. 849, the Court said such reincorporation is permissible:

> "* * * where (1) a company takes advantage of a statute permitting a corporation organized under a former statute to reincorporate under a statute superseding it. * * * ."

In the case of McCann vs. Children's Home Soc., (Cal.) 168 Pac. 355, the footnote citation states the case as holding in effect:

> "Where, on ascertaining that the incorporation of a society was defective it was reincorporated, it was held that the two organizations were identical, and that the new corporation was a continuance of the former de facto corporation."

The question submitted in paragraph 4 of your letter is the following:

> "The question also arises as to what disposition is to be made of the surplus in the expense and mortuary funds, and the rights of the various policyholders thereto, both those who go with the new corporation and those who elect to keep their old policies. And further, the problem of how to value the new outstanding insurance contracts, of rewriting all such contracts and the procedure to follow in case additional assessments are made seems important in this general picture for solution."

We believe Article X of the proposed by-laws of Capital Reserve Life Insurance Company heretofore discussed answers this question with respect to what disposition is to be made of the surplus in the expense and mortuary funds and the rights of the policyholders thereto, both those who go with the new corporation and those who elect to keep their old policies. Said Article X of said proposed by-laws states: "the funds accumulated by the company while doing business on the assessment plan shall be administered to the interest and for the benefit of the remaining assessment members; provided, that any assessment member who chooses to cancel his assessment policy and take out in lieu thereof a policy on the stipulated premium plan issued to him by the Capital Reserve Life Insurance Company, shall receive his equitable share of the funds in the form of part payment on the premium (or premiums) on such stipulated premium policy."

The consideration of the remaining part of the question now being considered, to-wit: "And further, the problem of how to value the new outstanding insurance contracts, of rewriting all such contracts and the procedure to follow in case additional assessments are made seems important in this general picture

for solution", partakes, we think, of the carrying on of the internal business of the reincorporated company. This, we believe, is not a proper question for discussion or consideration in the matter of determining whether Capital Mutual Association has the right to reincorporate as Capital Reserve Life Insurance Company, or whether the proceedings now being considered result at all events in the incorporation of a new company. It will be noted that in the scheme and plan set up in Sections 5886 and 5894 for the reincorporation of a previously organized company into an Article IV company, it is not required that any statement be made as to the details of their plans for carrying on the corporate business. On this principle of law, 14 C.J. 140, states the following text:

> "It is sometimes required that the articles, certificate, or charter shall state the manner of carrying on or conducting the business of the corporation, or contain other provisions as to its management, and a substantial compliance with such a requirement is necessary. But such a statement is not necessary unless required by the statute, nor, as a rule, is it either necessary or proper to state details as to the internal management of the corporation."

14A C.J., page 81, on this principle states the following text:

> "A board of directors or trustees is the governing body of the corporation. It is vested with the management of the ordinary corporate affairs. * * * ."

It is believed that under the facts disclosed in this undertaking to reincorporate the Capital Mutual Association into a stipulated premium company, the question of the handling of its monies and the administration of its corporate affairs are duties to be observed and performed by the Board of Directors of the reincorporated company, including the question of additional assessments which might be necessary in the protection of the policies still remaining in existence under the assessment plan. The statutes of this State and the decisions of our Appellate Courts furnish proper rules of law and remedies upon which to proceed if an insurance company does not, in the management of its affairs, observe the statutes of this State. It cannot be anticipated that they will disobey and violate the statutes under which they are

organized and carry on their business, but if such violations should occur they must necessarily be dealt with after they have been committed.

The question submitted in paragraph 5 of your letter is: "In case this should be approved as an entirely new corporation, then it appears the question of acquiring the assets of the present association by a reinsurance agreement under Section 5859 would require some consideration."

We believe this question is disposed of in our previous discussion and views in this opinion to the effect that this is not a new corporation but a continuation of the Article III assessment company by amendment of its Articles of Agreement to operate as an Article IV stipulated premium company. However, since the question is submitted we shall consider and discuss it.

Section 5859 of Article III, Chapter 37, R.S. Mo. 1939, to which our attention is directed in your letter, deals with the question of reinsuring or the transfer of risks. This Section, in part, is as follows:

> "No corporation of this state, organized or doing business under the provisions of this article, shall transfer its risks to or reinsure them in any other corporation, unless the contract of transfer or reinsurance is first submitted to and approved by a two-thirds vote of a meeting of the insured, called to consider the same, of which meeting a written or printed notice shall be mailed to each policy or certificate holder, at least ten days before the day fixed for said meeting; * * * ."

It is manifest that the proceedings we are considering is neither an effort upon the part of a corporation to reinsure or to transfer risks held by the company to any other corporation.

Neither the proceedings incident to the reincorporation of Capital Mutual Association, nor Article X of the proposed by-laws of the Capital Reserve Life Insurance Company in any way indicate that there is any intention to transfer or to reinsure the assessment policies issued by Capital Mutual Association in another company. Those policies remain, as these proceedings declare, obligations of Capital Mutual Association. Capital Reserve Life Insurance

Company does guarantee that it will administer the monies and affairs of the reincorporated company to the benefit and preservation of the rights and the payment of the policies when due, of all members of Capital Mutual Association, and that if such members choose to take out policies in the reincorporated company they may do so, and will be given credit as and for premiums on such new policies for their proportionate share of the funds of the former company. There is a definite distinction between the reincorporation of a company into another company whereby the contracts and policies of the original company are to be preserved intact and fully carried out by the reincorporated company and the act of transfering or reinsuring such policies in another corporation. Reinsurance by one company of its insureds in another company is permitted in numerous lines of insurance by the statutes of this State. Among such statutes are Sections 5969 and 5927, and other sections which may be read as information on the subject. Article IV, Chapter 37, R.S. Mo. 1939, nowhere treats of or makes any provision respecting reinsurance of any insureds under that line of insurance.

Reinsurance has a definite place in the business of insurance and is an often used privilege of insurance companies under statutes to reinsure their insureds in another company for added safety to them as a detail of carrying on the business of insurance. 33 C.J. page 44, on this subject, and as a definition of "reinsurance" states the following text:

> "* ** It is a contract whereby one party, called the 'reinsurer,' in consideration of a premium paid to him, agrees to indemnify the other party, called the 'reinsured,' against the risk insured by the latter by a policy in favor of a third person; the contract that one insurer makes with another to protect the first from a risk that he has already assumed; a new contract by which an insurer contracts for its own protection against liability in whole or in part for losses which it may suffer under risks which it continues to carry. * * * ."

We are convinced, therefore, by the matters of fact before us and by the authorities, including our statutes above cited and considered, that the question of the right or necessity of the insured members to participate in or vote upon the question of reincorporation of an Article III company into an Article IV stipulated premium company, has no part in the problem of the reincorporation of Capital Mutual Association on the theory of "reinsurance" is involved in the matter. Such reincorporation does not

constitute reinsurance.

In paragraph 2 of your letter you request our opinion upon whether the proceedings of Capital Mutual Association, an assessment company, to reincorporate as a stipulated premium company under the corporate name of Capital Reserve Life Insurance Company, is in conflict with the Constitution of the State of Missouri or of the Constitution of the United States. Our opinion is that these proceedings are in accordance with the statutes of this State, and that they do not contravene the provisions of the Constitution of Missouri or of the Constitution of the United States.

The regulation and supervision of the business of insurance is the exercise by statute of the police power of the several States. The States have this power and in the exercise of it they may define the terms upon which the business of insurance may be carried on. 12 C.J. 910, on this principle of law states the following text:

> "Under the American constitutional system, the police power, being an attribute of sovereignty inherent in the original states, and not delegated by the federal constitution to the United States, remains with the individual states. * * * ."

This principle of law has been recognized and approved by our Supreme Court in numerous cases. One case is State ex rel. vs. Vandiver, 222 Mo. 206, where the Court, l.c. 223, said:

> "Enactments of the Legislature providing for the control and management of corporations doing business in this State for the protection and well-being of its citizens, and licenses issued in pursuance thereof to such corporations to do business herein, are in no sense of the term contracts between the State and the corporations to which they are issued, but are police regulations, which may be amended or repealed by the Legislature at pleasure; and those claiming under such acts have no right to complian and are remediless in the premises."

These authorities then, we believe, permit us to say that these proceedings meet the requirements of the statutes of this State, the Constitution of this State, and the Constitution of the United States.

CONCLUSION

It is, therefore, the opinion of this Department:

1) That a domestic life or accident insurance corporation may, under the terms of Sections 5886 and 5894, Article IV, Chapter 37, R.S. Mo. 1939, reincorporate to carry on the business of insurance on the stipulated premium plan.

2) That under the procedure of reincorporation the reincorporation must, under Section 5886, be effected by the vote of a majority of the Board of Directors or Trustees of the company seeking to be reincorporated, and that the members of such corporation seeking reincorporation, in event such company would be an assessment company organized and existing under Article III, Chapter 37, R.S. Mo. 1939, would not have any duty to perform or privilege to exercise in effecting such reincorporation.

3) That questions of the preservation and disposition of surplus funds, expense and mortuary funds and the rights of various policyholders of both the former and the reincorporated companies, the method of valuing of new insurance contracts, the rewriting of contracts in the former company, and the procedure to be followed in case additional assessments become necessary and are made, belong to and are among the duties to be observed and performed by the Board of Directors in prosecuting the internal business affairs of the reincorporated company. These matters are not proper subjects to be defined or required in the Articles of Agreement or incorporation of the reincorporated company incident to procuring a certificate to do business from the Superintendent of the Division of Insurance.

4) That the proceedings submitted in this instance whereby Capital Mutual Association, a mutual insurance company organized and existing under the provisions of Article III, Chapter 37, R.S. Mo. 1939, are effecting a reincorporation to become a company doing business on the stipulated premium plan under the terms of Article IV, Chapter 37, R.S. Mo. 1939, comply with the statutes of this State in such cases made and provided and that such proceedings are not inconsistent with the Constitution of the State of Missouri or the Constitution of the United States.

Respectfully submitted,

APPROVED:

GEORGE W. CROWLEY
Assistant Attorney General

J. E. TAYLOR
Attorney General

GWC:ir