

INSURANCE: Amendment of Articles of Incorporation of Mid-Continent Casualty Company inconsistent with laws of Missouri.



May 14, 1953

Honorable C. Lawrence Leggett
Superintendent of the Division of Insurance
Department of Business and Administration
Jefferson City, Missouri

Dear Sir:

The following opinion is rendered in reply to your recent request regarding amendment of Articles of Incorporation of Mid-Continent Casualty Company, such request reading as follows:

"Inclosed herewith is a certified copy of the proceedings of the above captioned company to amend its Articles of Incorporation.

"Your opinion is respectfully requested as to whether said proceedings are in conformity to Sections 379.010 to 379.200, inclusive, R. S. Mo. 1949, and not inconsistent with the Constitution and laws of this state and the United States. The inclosure may be retained for your files."

The "Certified Copy Of The Proceedings Of Mid-Continent Casualty Company" forwarded with the above quoted request clearly discloses that the principal objective sought to be obtained by so amending the original Articles of Incorporation is to authorize the company to write all three classes of coverage outlined in Section 379.010, RSMo 1949. The statute just referred to clearly authorizes such amendment when the company has a fully paid capital of four hundred thousand dollars, and such capital stock requirement has been met by Mid-Continent Casualty Company by virtue of amendment to its Articles of Incorporation effected on or about February 23, 1952.

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Of necessity, this opinion must point out what appear to be deficiencies not only in the certified copy of proceedings but also in the actual amendments accomplished by such proceedings.

The first paragraph of the certificate prepared by the Secretary of Mid-Continent Casualty Company recites that the certificate is prepared in compliance with Section 379.010, RSMo 1949. Although Section 379.010, RSMo 1949 authorizes the amendment touching power to write additional lines of coverage, such statute does not provide for certifying such an amendment, and consequently the proceedings being reviewed are not, we believe, certified under Section 379.010, RSMo 1949.

It is believed that the Secretary of Mid-Continent Casualty Company is seeking to certify the proceedings effecting amendment of Articles of Incorporation under the directive contained in Section 351.095, RSMo 1949 of The General and Business Corporation Law of Missouri. In the absence of any provision in the law particularly applicable to Mid-Continent Casualty Company (Secs. 379.010 to 379.200 RSMo 1949) relative to procedure for certifying proceedings touching this type of amendment to Articles of Incorporation, a procedure in line with The General and Business Corporation Law of Missouri may be employed if not inconsistent with the original Articles of Incorporation of such company.

At paragraph numbered 2, of the certificate of proceedings being reviewed, it is therein stated that notice of the proposed amendment was given to stockholders in the manner required by the by-laws and by Section 251.230, RSMo 1949. It is believed that such statutory reference should have been to Section 351.230, RSMo 1949.

The proceedings being reviewed amend Article III of the original Articles of Incorporation in two important aspects which cannot be overlooked. Paragraph (21) of Article III of the original Articles of Incorporation has been deleted by the new amendment. It provided as follows:

"The powers of this corporation are nevertheless limited to include only those powers which are, or may hereafter be, granted to an insurance corporation organized and doing business under Section 379.010, Subparagraph 1, Subdivision 3, Revised Statutes of Missouri, 1949, and all amendments thereto."

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Just why the proceedings being reviewed do not contain a provision similar to that just quoted above is not clear to us. Such a provision becomes of paramount importance when an insurance company is organized and seeks to take unto itself broad corporate powers not specifically granted to it by the law of its incorporation, but rather seeks to incorporate in its charter broad powers given to private business corporations by The General and Business Corporation Law of Missouri. In examining Articles of Incorporation, and amendments thereto, of insurance companies organized in this State, this office has countenanced the inclusion of broad powers in such Articles of Incorporation when the grant thereof is limited to the law of the company's incorporation by a provision such as we have quoted above from Mid-Continent Casualty's original Articles of Incorporation.

The deletion of paragraph (21) from Article III of the original Articles of Incorporation of Mid-Continent Casualty Company, by the amendments being reviewed, cannot help but focus attention on the new powers which the company seeks to exercise by virtue of paragraph (28) of the amended Article III of its Articles of Incorporation. Such paragraph provides as follows:

"(28) To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise hold and possess or otherwise dispose of shares of capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this State or any other state, country, nation or government, and while owner of said stock to exercise all the rights, powers and privileges of ownership including the right to vote thereon, subject to the provisions of the laws of the State of Missouri."

A reading of the above quoted paragraph (28) of amended Article III of Mid-Continent Casualty Company's Articles of Incorporation discloses a broad power to invest its capital and surplus "subject to the provisions of the laws of the State of Missouri." Section 379.080, RSMo 1949 discloses how this particular type of insurance company is permitted to invest its capital and surplus and such statute should be referred to as the proper limitation on such power. If those proposing this particular amendment did not care to spell out such powers in the language of Section 379.080, RSMo 1949, they could have incorporated the power and referred to the

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statute by section number. The language of Section 379.080, RSMo 1949, discloses specific limitations which make the power found in paragraph (28) of the amended Articles of Incorporation inconsistent with said statute.

In the case of *McWilliams v. Central States Life Insurance Company*, 137 S.W. (2d) 641, the St. Louis Court of Appeals was ruling a point relative to power of an insurance company to make a certain type of investment in realty. In allowing the company's plea of *ultra vires* as a defense the Court spoke as follows at 137 S.W. (2d) 641, l.c. 646:

"It should be observed in this connection that insurance companies are not regarded as mere private business corporations. On the contrary, they are regarded as quasi-public corporations. The business of insurance is affected with a public interest, so much so that it is subject to the regulatory power of the state. It has very definite characteristics, with a reach of influence and consequence beyond and different from that of the ordinary business of the commercial world. Contracts of insurance are said to be interdependent. They cannot be regarded singly, or isolatedly, and the effect of their relation is to create a fund of insurance or a credit, the companies being the depositaries of the moneys of the insureds, possessing great power thereby, and charged with a great responsibility. The solvency of such companies manifestly is a matter of grave public concern. State ex rel. *Missouri State Life Ins. Co. v. Hall*, 330 Mo. 1107, 1116, 52 S.W. 2d 174, loc. cit. 177."

While it might be stated in defense of the proceedings being reviewed that the directing hand of Mid-Continent Casualty Company does not intend to make full use of broad powers contained in its Articles of Incorporation, the request for this opinion and review calls upon this office to disclose wherein the amended Articles of Incorporation may be inconsistent with the provisions of Sections 379.010 to 379.200, RSMo 1949, and with other applicable laws of Missouri.

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CONCLUSION

It is the opinion of this office that proceedings of directors and stockholders of Mid-Continent Casualty Company effecting amendment to said company's Articles of Incorporation, as certified by its secretary under date of April 24, 1953, are not in conformity with Sections 379.010 to 379.200, RSMo 1949, and are inconsistent with the laws of the State of Missouri.

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

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