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BLUE SKY DEPARTMENT: CORPORATIONS: Corporation can not act
beyond the corporate
powers and Blue Sky
Commissioner can not
supervise securities
unlawfully issued.

May 22, 1933.

#79

Honorable Neal J. Ross
Commissioner of Securities
Jefferson City, Missouri

Dear Mr. Ross:

This Department acknowledges receipt of your letter dated May 16, 1933, with inclosures with reference to the American Assurance Association.

It appears from your letter, which is of too great length to set out, that the American Assurance Association was incorporated under the provisions of Article X, Chapter 32 Revised Statutes Missouri for the year 1929; that it proposed to issue burial certificates under Section 5014 of said article and chapter; that the incorporation papers were not filed in your office until more than a year after the incorporation of the association; that the original incorporators have sold the association to a new concern. The questions you ask fairly set out the activities of the association and about which you inquire. Your questions are as follows:

"1. Was the American Assurance Association lawfully incorporated by pro forma decree, in absence of 3,000 paid members, and may it lawfully exist by means of pro forma decree which was granted?

2. Has said Association exceeded its powers as a benevolent association: -

(a) by establishing its reinsurance arrangement;

(b) by creating its building fund and buying option on building;

(c) by its issuance of assignments of interest in trust fund in amount \$330,000 in payment of building, equipment and repairs amounting to \$110,000;

(d) by obligating membership of Association and trust fund to pay such debt out of the trust fund earnings?

3. Are assignments of interest in trust fund, sold to persons not members of American Assurance Association, nor not holders of burial certificates of the Association, nor not members of V.F.W. exempt under Missouri Securities Act?

4. Is the issuance of assignments of interest in trust fund an exempted security, or does the statute contemplate the burial certificate as the only exempted security of such Associations?

5. Are the acts and powers which have been assumed by this Association in violation of the Constitution of Missouri and the laws thereunder?"

From the articles of agreement attached to your letter, or I assume it is a copy as it is not certified, it appears that the incorporators intended to incorporate under and have the benefits provided for in Section 5014 of Article X of Chapter 32 of the Revised Statutes of Missouri for the year 1929, and amendments thereto.

Section 5014 provides in part as follows:

"Associations may be incorporated under the provisions of article 10, chapter 32, R. S. 1929, for the purpose of furnishing funeral or burial benefits for their members; Provided, that no such benefits shall exceed the sum of three hundred dollars for the funeral or burial of any one member. Such association when formed shall be exempt from the provisions of the general insurance laws of this state, to wit: Chapter 37, R. S. 1929: Provided, that any such association now in existence may incorporate as provided in this law within ninety days after it shall take effect, and thereafter no such association shall be incorporated, as in this law authorized, until it shall have application for at least three thousand memberships, with at least one month's dues paid on each application: "

Section 5001 provides that dues of members of corporations organized under such Article X may be provided for by charter or by-laws and that no member shall be liable except for such dues and such donations or subscriptions as the members may obligate themselves to pay.

Section 5003 makes provision for the formation of a company for the purpose of erecting a building for the exclusive use of the society within the purview of Article X Chapter 32, which would seem to imply that a corporation organized for the purposes set forth in Section 5014 could not erect or own a building.

Section 5005 provides that the by-laws of such corporations shall be conformable to its charter and shall not enlarge the scope of the charter.

Section 5007 authorizes any corporation organized under Article X Chapter 32, to acquire stock in any company incorporated under the laws of this state for the purpose of erecting or purchasing a hall or building to the use and benefit of one or more of the corporations permitted to be organized under Article X of Chapter 32, which again implies that a corporation organized under Section 5014 could not

erect or purchase a hall or building for its use or benefit, but it is further provided in Section 5007 that any corporation authorized under Section 4999 may acquire and hold in its own name such real estate and buildings as may be necessary for assembly, library, laboratory and other rooms requisite for its purposes. On account of the peculiar wording of the last proviso it is extremely doubtful whether or not the legislature intended that corporations organized under Section 5014 would have authority to acquire and hold in its own name real estate and buildings, but that need not be passed on

Section 5014 permits the incorporation of associations,

"For the purpose of furnishing funeral or burial benefits for their members".

A corporation shall have no greater powers than the statute under which it was authorized gave it.

In *Railway and Navigation Company v. Railway Company*, 130 U.S. page 1, the Supreme Court of the United States said:

"The manner in which these powers (corporate powers) shall be exercised and the subjection to the general laws of the state and its general principles of public policy, are not in any sense enlarged by inserting in the articles of association the authority to depart therefrom".

Section 7 of Article XII of the Constitution of Missouri provides:

"No corporation shall engage in business other than that expressly authorized in its charter or the law which it may have been or hereafter may be organized, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business."

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We think there is no question but what the operations of the American Assurance Association as detailed in your letter, are beyond the charter powers of a corporation or ultra vires and the transactions have no validity.

The supervision of your office over certain securities is withheld by Section 7726 Laws of Missouri 1931, page 353. Subdivision E of Section 7726 reads as follows:

"Any security issued by a corporation organized and operated exclusively for educational, benevolent, fraternal, charitable or reformatory purposes, and no part of the net earnings of which inures to the benefit of any private stockholder or individual",

Can not be supervised by you.

While we think the business, except that provided for in its charter, in which the association is engaging is beyond its charter powers and we think it is the law that you would only have supervision over such securities as may be lawfully issued, to say that you had supervision over the ultra vires securities issued by the association would be to say that the transactions of the association were legal.

Section 5008 makes provision for the institution of proceedings by information in the nature of a quo warranto, to inquire into any alleged unlawful acts of or misuser or nonuser of its franchise by any corporation organized under Article X of Chapter 32, We think that that is the procedure, if any, in this case

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that should be followed and we suggest that you make a statement of facts to this office and upon that statement we will take such action as we deem advisable in the premises.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

Attorney General.

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