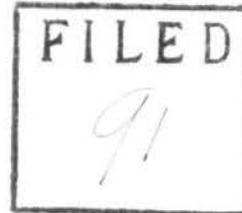


INSURANCE DEPARTMENT: CORPORATIONS:

Insurance companies
may increase capital
stock and issue preferred
or common stock therefor
and fix the priorities,
preferences and voting
power of such stock.

May 11, 1933

Honorable Joseph B. Thompson
Superintendent of Insurance
Jefferson City, Missouri



Dear Mr. Thompson:

This Department acknowledges receipt of
your letter dated May 5, 1933, in which you inquire as
follows:

"Will you therefore kindly give
me your opinion as to whether or
not a fire company organized
under section 5793, R. S. 1929,
for the purpose of doing a fire
insurance business may increase
its capital stock and let such
increase be represented by
preferred stock or by both
preferred and common stock."

Section 11, Article XII of the Constitution
of the State of Missouri defines a corporation as follows:

"The term corporation, as used
in this article, shall be
construed to include all joint
stock companies or associations
having any powers or privileges
not possessed by individuals
or partnerships".

The same definition of a corporation is
set forth in Section 4526 Revised Statutes Missouri, 1929.

Section 5793 authorizes the formation of
a corporation for certain purposes, among which is to make
insurance on certain specified properties against loss

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or damage by fire, lightning, hail and windstorn and earthquake. In so far as Article VI, Chapter 37, R. S. Mo. 1929, fails to provide the details for the incorporation authorized by Section 5793, such details are to be found and followed as provided in Article I of Chapter 32, R. S. Mo. 1929.

Section 10 of Article XII of the Constitution of Missouri, provides that:

"No corporation shall issue preferred stock without the consent of all the stockholders".

By implication at least, authority is given to issue preferred stock in a corporation if all the stockholders therein agree thereto.

Further authority for the issuance of preferred stock in the original formation or incorporation of a corporation is found in Section 4933 R. S. Mo. 1929.

Section 4952 R. S. Mo. 1929, authorizes the increase of capital stock, provides for the issuance of preferred stock covering such increase of capital stock and the stockholders at the meeting called for the purpose of increasing the capital stock, may determine the priorities, preferences and character of such preferred stock.

In the case of State ex rel Frank, et al v. Swanger, 190 Mo. 561, the Supreme Court had under consideration the question of the right of a corporation organized under the laws of this state, to issue preferred stock and to control the voting power of such preferred stock. At page 570 of the opinion the court quoted with approval the following:

"At common law it was and is legal, upon issuing preferred stock, to impose a condition that such stock shall not have a right to vote. There is no rule of public policy which forbids a corporation and its stockholders from making any contract they please in regard to restrictions on the voting power". (2 Cook on Corporations (5Ed.), sec.622b; Clark & Marshall, Private Corporations, p. 1320.) "

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After reviewing the cases on the subject the court at page 577 of the opinion stated its conclusion to be:

"In view of these principles we think that the General Assembly of Missouri, in the enactment of the amended sections 1312 and 1332 (Laws 1901, pp. 91 and 92), did not act beyond the pale of its constitutional authority in permitting the stockholders themselves in their articles to issue preferred stock and fix "its preferences, priorities, classification and the character thereof", and that the petitioners in this case had the power in defining character of the preferred stock to be issued by the corporation to provide that it shall be non-voting".

We, therefore, are of the opinion that a fire insurance company organized under Section 5793 Revised Statutes Missouri, 1929, may increase its capital stock and that such increase may be represented by preferred stock or by both preferred and common stock, when all of the stockholders of the corporation at a meeting legally called therefor agree thereto, and that such stockholders may at such meeting fix the priorities, preferences, character and voting power which such preferred stock or common stock may have.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

Attorney General.

GL:LC