

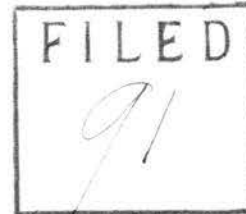
INSURANCE CORPORATIONS:

Insurance Company organized under article 4, chapter 37, R. S. Mo. 1929, may incorporate for perpetual term.

June 15, 1933. 6-24

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

Attention: Mr. A. C. Martin.



Dear Sir:

We are acknowledging receipt of your letter of June 9, 1933, in which you inquire as follows:

"We are enclosing herein Articles of Incorporation of the Public Service Life Insurance Company in duplicate, and will ask that you please examine same and if found satisfactory, kindly approve both copies and return them to this Department.

There is one item in these articles to which we desire to call your attention, and that is item 5,

'The company shall continue for a perpetual term.'

The article under which this company is incorporated says that they shall specify the time."

The Articles of Incorporation of the Public Service Life Insurance Company are drawn under article 4, chapter 37, R. S. Mo. 1929. The articles conform to the requirements of sections 5759 and 5760 R. S. Mo. 1929. You should, however, ascertain that the name "Public Service Life Insurance Company" is not being used by any other incorporated company and is not such an imitation of such a name as will mislead the public.

You call our particular attention to the fifth paragraph of the Articles of Incorporation, "The Company shall continue for a perpetual term" and inquire whether or not that is in compliance with the Statute.

The sixth requirement of Section 5760 R. S. Mo. 1929, is as follows: "The number of years the corporation is to continue." Under this chapter, there is no provision limiting the number of years during which a corporation may exist. All that the provision requires is that the corporation, in its articles, shall specify the period of its corporate existence. Article 4, chapter

37 is a special law relating to the organization of particular corporations, and if in conflict with the General Corporation Laws, Article 7, chapter 33, would modify the General Corporation laws in that respect. However, the General Corporation Laws, requirement 6 of Section 4933 R. S. Mo. 1929, provide: "The number of years a corporation is to continue which may be any number or perpetual." There is nothing, therefore, in the General Corporation Law which would prohibit a corporation from having perpetual existence, if its charter so provides, and there is nothing in article 4 of chapter 37 which would prohibit this particular corporation from providing in its charter for perpetual existence.

In State ex rel v. Lesueur, 141 Mo. 29, the question arose as to the length of the corporate existence. The General Corporation Law in effect at that time provides that, "every corporation as such has power: First, to have succession by its corporate name for the period limited in its charter, and when no period is limited, for twenty years." The court at page 32 says; "

"The law in force in 1868, when the institute was incorporated, intended, neither in letter nor spirit, to forbid the extension of corporate organizations beyond twenty years. That term was named as a limit only in event the fundamental articles of any particular corporation did not otherwise provide. Whether the articles do otherwise provide in a given case, is a question of law to be determined in each instance by a due consideration of the language used in the act of incorporation."

In State ex rel v. Road Company, 207 Mo. 85, it was held that the specific act of 1851 created the Toll Road Company and was its charter. Such act did not provide for the term of existence of the corporation, and the court said in the absence of the charter providing for the term of corporate existence, that reference must be made to the General Corporation Laws then in force, which, at that time, limited the life of corporations to twenty years, if their charter did not otherwise provide.

In State ex rel v. German Mutual Insurance Company, 234 Mo. 84, the Attorney General contended that the corporation was doing business after its corporate life had expired. The special legislative act creating the corporation uses the term "perpetual succession." The General Corporation Laws in effect at that time provided that in the absence of some provision to the contrary, the corporate existence should be for twenty years. The court, at page 91, said;

"The general rule is, as contended for by the Attorney General, that where a special act creating a corporation

uses the term 'perpetual succession' in connection with the charter, it implies nothing more than a continuance of succession during the existence of the company, which, in the absence of some special provision to the contrary, is for a period of twenty years, as provided for by the general corporation law which was then in force."

The court, however, found that the charter of the company contained language which evidenced a legislative intent that the existence of the corporation should not be limited to twenty years, and in so holding, aptly said at page 96:

"It may be truly said that life insurance companies are not founded with a view of being maintained for a brief period only, or for any limited time. Their nature and purpose denote perpetuity, and without which it would not be reasonable to suppose men of affairs would organize such companies or invest their money in the same as a protection for their families if they thought such companies might, and in all probability would, be dissolved long prior to the time when their policies would mature and become payable."

From the foregoing it is seen that article 4, chapter 37 does not prohibit a corporation from having perpetual existence. No limitation as to its existence is contained in that chapter. The proposed Articles of Incorporation, however, do distinctly specify that the corporation shall exist for a perpetual term. Such provision in the Articles is not only not repugnant, but is absolutely consistent with the requirements under the general corporation laws found in article 7, chapter 33. Even if reference be made to the general corporation laws, as was done in the above decided cases, it will be seen from the foregoing that there is nothing in the general corporation laws which prohibits this company from having perpetual existence, but, as a matter of fact, the general laws specifically provide for perpetual existence.

It is, therefore, the opinion of this Department that since the Articles of Incorporation provide for perpetual existence, that this Company may incorporate for such a period; that there is no prohibition against such existence contained in article 4, chapter 37, or in article 7, chapter 33, or the decisions construing those provisions.

We call your attention to the fact that this corporation, even though it has complied with the above sections, shall not be permitted to commence business until it has complied with section 5761 R. S. No. 1929. This section provides that the corporation shall not commence the business of life insurance until at least 300 persons eligible under the proposed plan shall

Mr. Joseph B. Thompson,

-4-

June 15, 1933.

have subscribed in writing to be insured in the aggregate amount of at least \$250,000.00, and shall have each paid in cash the amount of one annual stipulated net premium, nor until the Superintendent of Insurance and the Attorney General shall have further certified that the company has complied with the provisions of the article and is authorized to transact the business of insurance, and shall deposit with the Superintendent of Insurance securities ⁱⁿ the sum of \$5,000.00.

We are returning the original and one copy of the Articles of Incorporation.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S