

INSURANCE DEPARTMENT: CORPORATIONS: SECRETARY OF STATE:

Receiver of dissolved insurance corporation does not have authority to sell the charter of the corporation and no rights could be acquired by such a sale.

9-12
September 1, 1934

Honorable R. E. O'Malley
Superintendent Insurance Department
Jefferson City
Missouri



Dear Sir:

Re: Sedalia Life Insurance Company
now claimed Guaranty Fund Life and
Casualty Insurance Company.

This Department acknowledges receipt of your letter dated August 29, 1934 as follows:

"Re: Sedalia Life Insurance Company
now, Guaranty Fund Life and
Casualty Insurance Company.

You will find enclosed copies of the petition and decree in the case of Joseph B. Thompson, Superintendent vs. Sedalia Life Insurance Company, and also a copy of a motion to set aside order of dissolution and an order in that connection, and an order modifying the original decree and authorizing the sale of the charter. You will note that this receivership proceeding was lodged in the Circuit Court of Pettis County, Missouri.

The records of this Department show that prior to the 7th day of April, 1932, the Sedalia Life Insurance Company, a Corporation, was chartered by the Secretary of State of the State of Missouri as a stipulated premium company, organized under the terms of Article 4, Chapter 37, R.S. Mo. 1929. At that time this company was licensed by this Department to issue

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insurance contracts upon the stipulated premium plan.

Our records further show that some time prior to April 7, 1932 the petition attached hereto was filed in the Circuit Court of Pettis County, Missouri, in which the dissolution of the Sedalia Life Insurance Company was asked. The copy of that decree attached hereto shows that on the 7th day of April, 1932 that the said company was dissolved as of that date. The attached application and order also show that on or about the 26th day of September, 1932 the Circuit Court of Pettis County attempted to modify its decree of April 7, 1932 and to reinstate the charter. The records of the Department show that on or about this time this charter was sold to D. Sharpe of Kansas City, Missouri and on March 1, 1933 the charter was amended in the office of the Secretary of State to change the name of the company to the Guaranty Fund Life and Casualty Insurance Company and the location of the home office from Sedalia, Missouri to Kansas City, Missouri; that as of March 1, 1933 this amended charter was reinstated by the Secretary of State and has been since that time, and still is, operating under this reinstatement.

Under the statutes of Missouri relating to insurance companies the Circuit Court has the power to dissolve an insurance corporation and annul its charter.

We would like to have your opinion as to whether or not the Circuit Court of Pettis County, Missouri had the power to reinstate the charter and to modify its former decree to that extent. It so happens that all of the assets of the company were completely liquidated and after such liquidation the receiver was discharged.

We are giving you this information also for the purpose of permitting you to take any steps in regard to this charter that you might care to, if you should find that the

Circuit Court exceeded its power in attempting to reinstate the charter."

1.

From the inclosures attached to your letter it appears that the then Superintendent of Insurance, Joseph B. Thompson, prayed in the petition filed in the Circuit Court of Pettis County, Missouri against the Sedalia Life Insurance Company, for a permanent injunction against the company from further transacting its business; for a decree dissolving the defendant company, and for the appointment of a temporary agent to take charge of the company.

The draft of the decree attached to your letter contains the following:

"WHEREFORE, the court renders and enters its judgment herein dissolving defendant company and cancelling and making void all of defendant's policy obligations, if any, outstanding and in force as of this date. "

Thereafter, on the 26th day of September, 1932, on motion filed by Thompson, Superintendent, the Circuit Court of Pettis County attempted to modify its original decree of dissolution and among other things made an order as follows:

"It is accordingly ordered, adjudged and decreed that the parts of the decree heretofore on the 7th day of April, 1932, entered which may be construed to annul or dissolve the charter of Sedalia Life Insurance Company be and the same hereby is modified and set aside and that said charter be and the same hereby is adjudged and decreed to be alive and an existing asset and subject to sale.

It is further ordered, adjudged and decreed that the receiver be and he hereby is authorized to sell same at private sale to D. Sharpe for the price and sum of two hundred dollars cash."

2.

The petition referred to alleges that the Sedalia Life Insurance Company was a corporation organized and existing under and by virtue of the laws of the State of Missouri. The decree of the court so found, so that we necessarily assume that a charter was issued to the defendant corporation by the Secretary of State of the State of Missouri.

A 'charter' is defined in Ryan v. Witt (Tex.Civ.A.) 173 S. W. 952, 959, as follows:

" 'A charter' is the authority by virtue of which an organized body acts."

As to the effect of the dissolution by a decree of court on a corporation, in Park Co. v. Gibson 268 Mo. 394,403, the Supreme Court of this state said:

"In the case of Crossman v. Vivienda Water Co., 150 Cal.l.c.580, it was held: 'It is settled beyond question that, except as otherwise provided by statute, the effect of the dissolution of a corporation is to terminate its existence as a legal entity, and render it incapable of suing or being sued as a corporate body or in its corporate name. It is dead, and can no more be proceeded against as an existing corporation than could a natural person after his death. There is no one who can appear or act for it, and all actions pending against it are abated, and any judgment attempted to be given against it is void. As to this, all the text-writers agree, and their statement is supported by an overwhelming weight of authority.'"

3.

It appears from the inclosures in this case that, acting under the pretended sale of the pretended charter of the Sedalia Life Insurance Company, the alleged charter was purported to be amended in the office of the Secretary of State to change the name of the company from Sedalia Life Insurance Company to Guaranty Fund Life and Casualty Insurance Company, and the location of the home office from Sedalia to Kansas City, Missouri. Doubtless this was done without

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knowledge on the part of the office of the Secretary of State as to what had previously transpired as to the Sedalia Life Insurance Company. The laws of this state provide for the organization of corporations and for the payment of certain fees on account thereof, and the maintenance of certain deposits when certain insurance companies are incorporated. The evident purpose of the manner of the handling of the purported charter of the defunct Sedalia Life Insurance Company, was to defraud the state of its legitimate fees and income which it would have derived from a proper organization of the Guaranty Fund Life and Casualty Insurance Company, and to evade the requirements of the insurance laws with reference to the maintenance of deposits for the protection of policyholders. When the Circuit Court of Pettis County dissolved the Sedalia Life Insurance Company as a corporation, according to the decision of the Supreme Court of this state above quoted the corporation lost its identity and the existence theretofore given it by its charter, and necessarily the evidence and source of its former incorporation went with it.

To approve the record made in this case would be to give sanction to a patent fraud on the State of Missouri.

CONCLUSION.

We are of the opinion that the pretended sale of the pretended charter of the Sedalia Life Insurance Company was a nullity, and that the pretended Guaranty Fund Life and Casualty Insurance Company does not have legal existence as a corporation under the laws of this state.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC