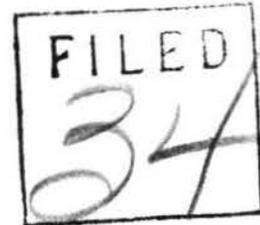


INSURANCE:: Stipulated premium company may not amend charter as burial society by resolution.

May 31, 1938



Mr. Wm. F. Goodman  
Corporation Attorney  
Secretary of State's Office  
Jefferson City, Missouri

Dear Mr. Goodman:

We wish to acknowledge your request for an opinion under date of May 26, 1938, as follows:

"Find enclosed resolution on the part of the Atlas Life Society, the purport of which is to effect a re-organization of said company to come within the provisions and to be entitled to the rights and privileges of a burial association organized under the provisions of Article 10, Chapter 32, Revised Statutes of Missouri, 1929.

We know of no statutory provision, case decision or legal interpretation of the general corporation laws of this state that would privilege such a re-organization.

We ask the favor of an opinion from your office as to whether or not a re-organization under Article 10, Chapter 32, Revised Statutes of Missouri, 1929, may be effected through the filing of the enclosed resolutions."

The Atlas Life Society was originally incorporated under Article X, Chapter 32, R. S. Missouri 1929, relating to benevolent, religious, educational and scientific associations as a burial society under Section 5014 of said article, 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: Provided, that no member shall be admitted into any such association who, at his or her last birthday was over age of 65 years, and that the premium or dues collected by every such association shall increase at the same as, or a greater rate than, premiums are increased from 10 years to 50 years: Provided, also, that if any such corporation shall receive any member as of any date prior to first day of of the month in which such member was actually received, or who shall receive any member at a rate for any other age than the actual age of such member shall be deemed guilty of a misdemeanor and upon conviction punished by a fine of not less than five hundred (\$500.00) dollars nor more than one thousand (\$1,000) dollars, and in addition thereto, it shall be the duty of circuit judge before whom such case is tried to enter judgment declaring a forfeiture of the charter of the defendant association."

Subsequent thereto the Society sought to reincorporate under Section 5775 R.S. Missouri 1929, as an insurance company doing business under the stipulated premium plan, as follows:

"Any domestic life or accident corporation, company or association existing or doing business in this state at the time this article takes effect, may, by the vote of a majority of its board of directors or trustees, accept the provisions of this article and amend its articles of incorporation to conform to the same, so as to cover and enjoy any and all the provisions and privileges of this article the same as if it had been originally incorporated thereunder, and it shall file such amended articles of incorporation in the office of the secretary of state, a certified copy of which shall be filed with the insurance department, and shall thereafter perpetually enjoy the same and be deemed to have been incorporated under this article. Reincorporation, however, shall in no way annul, modify or change any of the existing contracts and liabilities of such corporation, and any and all such contracts and liabilities shall continue in force and effect the same as though such corporation had not reincorporated or qualified under this article, neither shall such reincorporation in any way prejudice, impede or impair any pending action or proceeding or any rights previously acquired."

At this point we quote from the Resolution adopted by the Society, which you enclosed, reading in part as follows:

"WHEREAS, on March 15th, 1938, the Honorable Dwight H. Brown, Secretary of State, of the State of Missouri, issued an amended Certificate of Incorporation to the Atlas Life Society, declaring it to be an insurance company on the stipulated premium

plan for a period of one hundred years from that date, with a fully paid capital stock of twenty five thousand dollars (\$25,000.00), and

WHEREAS, as provided by law, proper request was made of the Insurance Department of the State of Missouri, that a license be issued to the Atlas Life Society, authorizing it to write business on the stipulated premium plan, and

WHEREAS, while no license has been issued by the Insurance Department of this State or anyone for it, and no move of any kind has been made by the Insurance Department of this state, or anyone for it, toward the end that said license might be issued, and

WHEREAS, The Atlas Life Society, by reason of the failure of said Insurance Department to issue a license to it to write its business on the stipulated premium plan, Atlas has been greatly hampered in the proper conduct of its business to the end that great damage to it and/or it's members might accrue should its inactivity longer exist, and

WHEREAS, it is the unanimous sense of the Board of Directors, of the Atlas Life Society that the best interests of the Society and of it's members would be served should the Atlas Life Society here and now amend it's Articles of Association to the end that it's amended charter as a stipulated premium life insurance company be again amended and it's Articles of Association, as thus amended, become in substance and in fact the same text as they were previous to their amendment on March 12th, 1938:"

As indicated, an amended certificate of incorporation was issued by the office of Secretary of State to the Society declaring it to be an insurance company on the stipulated premium plan, but the Society was unable to obtain a license from the Insurance Department. The Society is therefore asking that

"it's amended charter as a stipulated premium life insurance company be again amended and it's Articles of Association, as thus amended, become in substance and in fact the same text as they were previous to their amendment on March 12, 1938."

As a stipulated premium life insurance company authorized to do business under the provisions of Chapter 37, R. S. Missouri 1929, the company by resolution seeks to amend its charter and come within the provisions of Article X, Chapter 32, R. S. Missouri 1929.

A glance at Section 5019 of said Article X would negative such a possibility inasmuch as said Article declares that it is not applicable to life insurance companies authorized to do business under the provisions of Chapter 37, R. S. Missouri 1929, in part as follows:

"This article shall not be so construed so as to apply to life insurance companies, associations or societies authorized to do business under the provisions of Chapter 37, R. S. Missouri 1929 \* \* \* \*".

We have examined the statutes carefully and fail to find any authority that would privilege a reincorporation in the manner here undertaken.

Mr. Wm. F. Goodman

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We are therefore of the opinion that the Atlas Life Society organized under Chapter 37, R. S. Missouri 1929, as a stipulated premium life insurance company may not re-incorporate under Article X, Chapter 32, R. S. Missouri 1929, by the filing of the enclosed resolution.

Respectfully submitted,

MAX WASSERMAN,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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