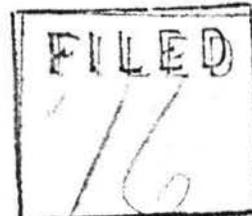


INSURANCE : The foreign insurance corporations' right to  
: license is dependent not on charter powers,  
CORPORATIONS: but on rights granted by license.

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April 16, 1938

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Hon. George A.S. Robertson  
Superintendent of Insurance  
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an opinion upon the following question:

"Is a foreign stock casualty insurance company, whose charter provides that it may issue participating policies, entitled to be licensed to do business in the State of Missouri?"

In the correspondence which accompanied your request for an opinion, the applicant for the license, the Arex Indemnity Company, states that they do not wish to issue any participating policies in the State of Missouri. Therefore, the legality of a participating policy issued by a foreign stock casualty company need not be passed upon. The only obstacle to the granting of a license to the above named company is the fact that its charter granted by the State of New York allows it to write participating policies.

As to the nature of a license granted to a foreign insurance company to do business within the state, we believe the rule is aptly stated in *Allin, Ins. Commissioner, v. American Indemnity Company*, 55 S.W. 2nd 44, 1.c. 47, in which the Court of Appeals of Kentucky, the highest court of that state, said:

"\* \* the commissioner is not concerned with the question of the charter powers of the appellee company, whereby it is authorized to write both fire and automobile insurance in states so permitting it, but his proper inquiry is, what is the

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business, proposed by the company applying for a license, to be transacted in this state, and is it one not allowed by the laws of this state, or, if licensed, would he thereby be permitting a foreign corporation to transact its licensed business within the state under more favorable conditions than granted domestic corporations in a similar business?"

The above holding that in regard to licensing of foreign corporations, the State of Missouri is not concerned with charter powers of foreign corporations, but only with what powers it proposes to exercise within the State, appears to be the rule in Missouri.

In *Smoot v. Bankers Life Association*, 138 Mo. App. 438, l.c. 466, 120 S.W. 719, the court said:

"\* \* this defendant, a foreign corporation, is authorized by the superintendent of the insurance department of this State to transact life insurance business in this State only and solely on the assessment plan."

To the same effect is *Missey v. Supreme Lodge*, 147 Mo. App. 137.

Moreover, if such a policy is illegal, upon which question we do not pass, the license could still be issued because the holdings of the Missouri courts have been that if the charter of a foreign corporation empowers it to do something that is illegal under the laws of Missouri, then such corporation may be licensed here, but has no right to do such illegal acts, and such power is treated as not existent in the charter. This view is tersely stated in *State ex rel. Railroad Company v. Cook*, 171 Mo. 348, in which the court en banc said:

"A foreign corporation admitted to do business in this State, either by comity or by express leave of the statute, can not transact any business which a domestic corporation of like character can not transact, anything in the charter of the foreign corporation to the contrary notwithstanding. In such case if the charter

of the foreign company contains a grant of power not allowed by our law, that grant will be treated simply as if it had not been made."

The right of a foreign corporation to transact business in the State of Missouri is one that the courts jealously protect and give a liberal construction in order to insure this right. State ex rel. Railroad Company v. Cook, 181 Mo. 596, State ex rel. Tank Car Company v. Sullivan, 282 Mo. 261. As was said in the last mentioned case, l.c. 279:

"Looking to our statutory provisions for the public policy of the State, it will be readily observed that we have adopted a most liberal comity toward corporations organized under the laws of other states and countries. Indeed, we have placed them upon substantially the same footing as our own domestic corporate bodies and given them the same powers, and subjected them to the same obligations that are provided for like corporations in this State \* \* \*."

The purpose of the laws relating to licensing of foreign corporations is taken by the courts as being not to exclude foreign corporations, but to merely restrict them so as to place them on an equal basis with domestic corporations and to provide for the protection of the public of the State.

#### CONCLUSION

It is, therefore, the opinion of this department that the Superintendent of Insurance, in licensing a foreign insurance company to do business in this State, looks not to the charter in order to determine the legality of such company's business, but rather to the type of business which is to transact within the state.

Hon. George A.S. Robertson

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It is further the opinion of this department that the foreign insurance company doing business within the State of Missouri, is controlled by the provisions of its license and not by its charter, and if the charter allows such insurance company to do something unlawful in Missouri, such provision is taken as not being within the charter at all insofar as it relates to the company's right to do business in Missouri.

Respectfully submitted,

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APPROVED By:

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