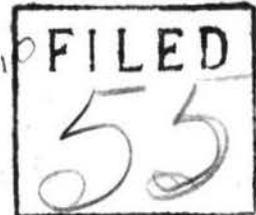


INSURANCE: Reasons for disproving articles of incorporation for Missouri Valley Mutual Casualty Company.

February 10, 1939



Hon. Ray B. Lucas, Superintendent
Insurance Department
Jefferson City, Missouri

Dear Sir:

Att: Charles L. Henson, Chief Counsel

We received your letter of February 7 in which you enclosed the proposed articles of incorporation of the Missouri Valley Mutual Casualty Company for our examination and approval as is required by law. The incorporators are attempting to form a company under the above name under the terms of Article 7, Chapter 37, R.S. Missouri, 1929.

We are unable to approve the articles of incorporation for the following reasons:

(1) Article III of said articles reads in part as follows:

"The specific kind of business which this corporation proposes to transact, is to write, grant and issue policies of insurance on automobiles, both passenger cars, commercial, and other vehicles including their contents, in all of its phases, covering against the hazards of fire, lightning and transportation; tornado; cyclone, windstorm, hail, earthquake, explosion, flood and water damage; glass breakage; theft, robbery, and pilferage; collision and upset, and all kindred and associated coverages, including comprehensive coverage; * * *" (Underlining ours).

The meaning of the above language is that the company would be authorized to write a fire policy only or any other coverage mentioned therein on motor vehicles.

This is in violation of the terms of Section 5844, which section is contained in Article 7, Chapter 37, R.S. Missouri, 1929. The pertinent part of this section reads as follows:

"Automobile insurance. Against any or all loss, expense and liability resulting from the ownership, maintenance or use of any automobile or other vehicle; Provided, no policies shall be issued under this subsection against the hazard of fire alone."

The use of the term "comprehensive coverage" in connection with automobile insurance, as we understand the term, means the authority to write a full coverage policy including fire liability and property damage insurance. We are informed that the term is so used and considered in insurance circles. That being true, the incorporators have apparently attempted to form a corporation authorized by its charter to write fire insurance alone on automobiles, and also the right to issue policies including full coverage. Since such provision is in violation of said Section 5844, supra, it is not in proper form and cannot be permitted in the articles of incorporation.

(2) Another part of Article III is in the following language:

"This corporation shall also have authority to buy, lease, rent, sell, exchange, let, mortgage, and otherwise acquire and dispose of real estate and buildings necessary for its use, or for the benefit of its policyholders, and to exercise any and all other powers and rights not prohibited by law."

Unquestionably, the corporation, as such, has the power and authority to buy, lease, rent, sell, exchange, let, mortgage and otherwise acquire and dispose of real estate necessary for its corporate use in carrying on the business of the company when duly formed. However, when the corporation is formed, it will become an entity, distinct and apart from its incorporators or members or policy holders, and it will have no right to acquire and hold real

estate "for the benefit of its policy holders", or one or more of them. Nowhere does the insurance law provide that property can be purchased for other than strictly corporate uses.

(3) Article IV reads as follows:

"The annual meeting of the memberships of this corporation shall be held at its home office on the third Tuesday of January of each year at ten o'clock A.M., unless otherwise changed by the Board of Directors as provided for in the by-laws of this corporation. A majority of all members or incorporators present, in person or by proxy, at any of the meetings of the membership or incorporators, shall constitute a quorum for the transaction of its business, and every decision of a majority of these persons duly assembled shall be valid as a corporate act."

Apparently, the incorporators are attempting here to provide that if a majority of the incorporators are present at any annual meeting, that a meeting of such incorporators can take the place of and act in lieu of a meeting of the members. The language is in the alternative. It states that "a majority of all the members or incorporators present" shall constitute a quorum for the transaction of its business at the annual meeting. This section is in conflict with Section 5847, also contained in said Article 7, Chapter 37, R.S. Missouri, 1929, which reads as follows:

"Every member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as may be provided in the by-laws."

Consequently, the attempt to place the management of the company in the hands of the incorporators or a majority of them is contrary to law and cannot be approved and permitted in the articles of incorporation.

Hon. Ray B. Lucas

- 4 -

February 10, 1939

For the above reasons, we are unable to approve and certify the articles of incorporation of the Missouri Valley Mutual Casualty Company, and we are returning the articles, together with the affidavit of publication, to you herein.

Yours very truly,

J.F. ALLEBACH
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

JFA:VAC
Enc.