

INSURANCE: Disapproval of proposed Articles of Incorporation of Industrial Benefit Insurance Company.

September 27, 1939

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

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Att: Charles Harvey

Dear Sir:

We have received your letter of September 22 in which you enclosed the proposed Articles of Incorporation of the Industrial Benefit Insurance Company.

We are unable to approve the proposed Articles of Incorporation. It is apparent that the incorporators are attempting to form a new corporation under the terms of Article 4, Chapter 37, R.S. Missouri, 1929, and in such attempt, they have not complied with the provisions of that article as to form or requirements. While the title or heading to the said articles indicates the same as amended Articles of Incorporation, yet the articles themselves do not provide that any existing charter is to be thereby amended. The first paragraph of the articles reads as follows:

"BE IT KNOWN, that we, the undersigned, E.G. Rankin, L.D. Holder, S.W. Wells, B. Hollander, R.L. Holder and J.E. Bantle, being all the members of the present Board of Directors of INDUSTRIAL BENEFIT ASSOCIATION, together with J.B. Rule, M.D., all citizens and residents of the State of Missouri, do hereby associate ourselves together as a body politic under the name and style of INDUSTRIAL BENEFIT INSURANCE COMPANY, for the purpose of doing a life, accident and Health insurance business on the

stipulated premium plan as a mutual company, as defined and regulated by the provisions of Article 4, Chapter 37 of the Revised Statutes of Missouri, 1929, and for that purpose do hereby enter into the following agreement:"

The above paragraph states that the undersigned, being all the members of the present Board of Directors of the Industrial Benefit Association "associate themselves together as a body politic" for the purpose of doing a life, accident and health insurance business on the stipulated premium plan. Since there is no indication whatsoever in the wording of the articles to the effect that an existing charter is being amended, and since the wording indicates that a new corporation is being formed, the same can only be viewed as an attempt to form a new corporation.

This being the case, the incorporators have not complied with the terms of Section 5760, R.S. Missouri, 1929, and contained in Article 4, Chapter 37, dealing with incorporation of stipulated premium companies.

Section 5760, supra, provides that the incorporators shall associate themselves by articles of agreement, in writing, duly signed and acknowledged, setting forth, among other things, the following:

" * * third, the amount of the capital stock of the corporation, provided the same be a stock company, which shall not be less than \$25,000, the number of shares into which it is divided, and the par value thereof, that the same has been bona fide subscribed, and actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors; the name and place of the several shareholders and the number of shares subscribed by each; *"

It will be observed that nowhere in the proposed Articles of Incorporation is there any mention of the amount of capital stock of the company or that capital stock in the amount of not less than \$25,000.00 has been fully subscribed and paid up in cash, together with the number of shares into which the same is divided, and the par value thereof. The Articles of Incorporation do not indicate what sort of a financial structure it proposes to have in order to comply with the insurance laws of this state or any information to indicate that the financial requirements and capital setup, as provided for in Article 4, has been or will be complied with.

Attached to the Articles of Incorporation is a copy of a resolution of the Directors of the Industrial Benefit Association wherein it is resolved that the said Industrial Benefit Association accepts and adopts the provisions of Article 4, Chapter 37, R.S. Missouri, 1929, for the purpose of conducting the business of the company on the stipulated premium plan. The resolution further provides that the name of the company be changed to that of the Industrial Benefit Insurance Company and further that the officers "are hereby directed to cause the Articles of Association to be amended to conform to and comply with said Article 4, Chapter 37, Revised Statutes of Missouri, 1929, and amendments thereto, and that they be authorized and directed to obtain a Charter or Certificate of Incorporation under said Article and Chapter". It appears, also, that the incorporators of the Industrial Benefit Insurance Company are composed of the Directors of the Industrial Benefit Association only. This resolution, of course, either authorizes the incorporators to amend the Articles of Association of the Industrial Benefit Association or to form a new company. As we said above, there is nothing in the articles themselves to indicate that any existing charter is being amended. Further, if a new company is being formed, and that appears to be the effect of the articles, then the statutory requirements have not been fully complied with.

Hon. Ray B. Lucas

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CONCLUSION.

Therefore, since the proposed Articles of Association of the Industrial Benefit Insurance Company, as submitted, provide for the formation of a new company, and since the direct statutory requirements as to the form of said articles has not been complied with, this department cannot approve the same.

Respectfully submitted,

J.F. ALLEBACH
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

JFA:VAC