

INSURANCE:)
BURIAL SOCIETIES:)

United Mutual Life Assurance Society of America, Inc., cannot be licensed as a foreign corporation to do business in Missouri; if it does business without complying with the statutes it is a violation of the penal laws.

August 4, 1939.

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Honorable Russell Maloney
Corporation Commissioner
Secretary of State
Jefferson City, Missouri

Dear Mr. Maloney:

This is to acknowledge your letter, as follows:

"Re: United Mutual Life Assurance Society of America, Inc.

"Find enclosed a copy of the articles of agreement, by-laws and certificate issued as a burial society by the above corporation.

"This department would like to know whether this corporation should be licensed as a foreign corporation to do business in Missouri. Also, whether or not, if it is not necessary for it to be licensed, such corporation would be violating any law in Missouri by doing business and issuing the enclosed certificate in Missouri."

The Articles of Incorporation read in part, as follows:

"The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all of the things herein set forth as fully and to the same extent as natural persons might or could do, and in any part of the world; viz:

"TO UNITE reputable men, women and children, not for pecuniary profit, but for the purpose of giving aid to widows, widowers, creditors, and those dependent on its deceased members, (nothing in the above shall be construed as to caring for dependent children), all such aid to be by voluntary contributions and not by fixed dues or assessments."

"This corporation shall not be for profit, nor shall it have any capital stock. Members shall be admitted on such terms and conditions as are provided in the By-Laws."

The above Articles of Incorporation specifically state that the corporation is one not of profit. Only foreign corporations formed for profit or pecuniary gain need be licensed to do business in this state.

Section 4596, R. S. Mo. 1929, provides in part, as follows:

"Every corporation for pecuniary profit formed in any other state, territory or country before it shall be authorized or permitted to transact business in this state * * * * shall have and maintain a public office or place in this state for the transaction of its business, where legal services may be obtained upon it, * * * * and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. * * *"

Section 4598, Laws of Missouri 1937, Page 205-206, reads in part, as follows:

"Every company incorporated for the purpose of gain under the laws of any other state * * * * Upon compliance with these provisions by the corporation, the secretary of state shall give a certificate that said corporation has duly complied with the law, and is authorized to engage only in the business set out in the statement filed with its charter. * * * *"

It is noted from the above sections and others forming part of Article 1, Chapter 32, R. S. Mo. 1929, that only corporations organized for pecuniary profit or gain are required to take out a license in order to do business in this state. *Mutual Orange Distributors v. Black et al.*, 287 S. W. 846. While the Secretary of State has only the authority to license foreign corporations organized for gain, yet it does not follow that a non-profit corporation organized in some other state may do business in Missouri without first complying with necessary statutory restrictions governing similar corporations that may be organized in this state.

The United Mutual Life Assurance Society of America, Inc., is a non-profit corporation organized under the laws of the State of Delaware and its business consists of issuing a certificate which is similar to policies issued by insurance companies. The certificate provides that the member must pay a stipulated sum in installments and while the policy is in force death benefits, old age benefits and benefits due to accidental loss to certain parts of the body are paid. If the installments are not paid, the member loses all rights to participate in the benefits. In the event of death of the member, the certificate provides "it is understood and agreed that the Society may make any payment provided for in this certificate to any relative by blood, or connection by marriage, or to any person appearing to the Society to be equitably entitled to the same by reason of having incurred expenses on behalf of the Member for his or her burial."

A reading of the Certificate, together with the Articles of Incorporation, show that said corporation is susceptible of being interpreted to be one which could engage in three business activities which are provided for by the Missouri Statutes, namely: (1) co-operative companies, Article 9, Chapter 32, R. S. Mo. 1929; (2) Insurance Companies, Chapter 37, Article 13; (3) Associations for the purpose of furnishing funeral or burial benefits to their members, Sections 5014 to 5018, inclusive, R. S. Mo. 1929.

No provision is found in our statutes whereby non-profit corporations, whether domestic or foreign, may engage in business as a co-operative company or as an insurance company or as a burial society unless compliance is made with the statutes governing same prior to engaging in business.

Section 5014, R. S. Mo. 1929, exclusively provides the method for incorporating a burial society. Whether said statute is constitutional or not, we do not decide. *Rockhill Tennis Club v. Volker*, 331 Mo. 947, 56 S. W. (2d) 9. However, the Kansas City Court of Appeals in the case of *In re Henry County Mutual Burial Association*, 77 S. W. (2d) 124, held that a burial association formed in one county in this state could not remove its location to another county unless it went through the same procedure as an original incorporation. The Court said: "Section 4997 (5014 R. S. Mo. 1929) provides for the original incorporation of such corporations. It will thus be seen that in order to change the location of a corporation of this kind, it is necessary to go through the same process that is required in the original incorporation of the Association."

Section 5018, R. S. Mo. 1929, reads as follows:

"Any person, who, for himself, or as the agent for any firm, company, corporation, society or association, shall furnish, or attempt to furnish, any burial or funeral benefit without first complying with the provisions of this

article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than three months nor more than six months, or by both such fine and imprisonment."

From the above, it is our opinion, that a foreign incorporated non-profit association could not engage in business in Missouri as a burial society without first becoming incorporated in Missouri, as provided for in Section 5014, R. S. Mo. 1929. If a foreign non-profit society should engage in business in Missouri as a burial society without first complying with the Missouri laws, then such would be amenable to the penal provisions of Section 5018, R. S. Mo. 1929, in our opinion.

If said non-profit society of Delaware contends that it is not engaged in a burial society business, then it must either be engaged in an insurance business or doing business as a co-operative company. Of course, if it is doing an insurance business, then it has to comply with the provisions of Chapter 37, R. S. Mo. 1929, or be liable to the penal provisions of said chapter. If it contends that its society is neither engaged in selling insurance nor doing business as a burial society, then such would be doing business as a co-operative company and amenable to the provisions of Article 9, Chapter 32.

Section 4986 of Article 9, Chapter 32, reads in part, as follows:

"Any person, co-partnership, association, organization, or corporation which is now engaged in or shall hereafter engage in issuing contracts or agreements* * * providing for the maturing or fulfilling of such con-

tracts or agreements in the order of their issue, or in some other fixed or arbitrarily determined order or manner * * * * shall deposit with the State Treasurer * * * * so that the whole deposit shall be equal in cash value to the sum of \$25,000.00 * * * "

Section 4988 of Article 9, Chapter 32, reads as follows:

"If any person, copartnership, association, organization or corporation, whether they be citizens of this state or of some other state, shall attempt to place or sell any contracts or agreements, or shall attempt to do or transact any business whatsoever in the name or on behalf of any person, copartnership, association, organization or corporation engaged in any business sought to be controlled by this article without first complying with the provisions of this article, said person, officer, agent, corporation or representative shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars or more than one thousand dollars for each offense,"

whether they be citizens of this state or of some other state.

From the above, we are of the opinion that any non-profit corporation incorporated under the laws of another state and which sells certificates providing for the maturing of such certificates in some fixed or arbitrarily determined order or manner (as subject corporation could contend it was doing) would be subject to criminal prosecution if compliance were not first made with Article 9, Chapter 32.

August 4, 1939

CONCLUSION.

It is our opinion:

1. That the United Mutual Life Assurance Society of America, Inc., cannot be licensed as a foreign corporation to do business in this state.

2. That said non-profit corporation in doing business in Missouri by issuing or selling its certificates would be violating the penal laws of this state unless it complied with Missouri statutes prior thereto and governing the type of business it desires to do.

We are returning the enclosures appended to your letter.

Yours very truly,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

JLH:EY
CRH:EG