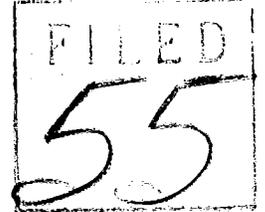


INSURANCE: Proceedings to increase capital stock of
the Business Men's Assurance Company of
America invalid.

February 7, 1941.

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



Attention: Mr. William G. Chorn

Dear Sir:

We are in receipt of your letter of January 28th,
wherein you state as follows:

"We are enclosing herewith certified copies of the proceedings of a meeting of the Board of Directors and of the regular meeting of the stockholders of the Business Men's Assurance Company of America, both held on January 23, 1941. Both of the aforesaid proceedings, by resolution, authorized the amendment of the Company's Articles of Association or Charter to provide that the capital stock of the Company shall be \$1,000,000.00 divided into 10,000 shares of a par value of \$100.00 each; and further authorized a stock dividend of 100% upon the capital stock of \$500,000.00 now outstanding to be charged against the Company's surplus.

"We respectfully request your opinion as to whether or not the action taken at said meetings, increasing the capital stock of the Company from \$500,000.00 to \$1,000,000.00 by means

of a 100% stock dividend paid for out of surplus, was a proper and valid action and not in violation of the constitution or laws of the State of Missouri or of the United States.

"Please return the original copies of the aforesaid proceedings for our files and keep the carbons for your own record."

Section 5915 R. S. Mo. 1929 is a general section, under our statutes, relating to the increase and reduction of stock of insurance companies incorporated under the laws of this state:

"Any insurance company incorporated under the laws of this state may increase or reduce its capital stock for the purposes, in the manner and to the extent prescribed by law. Provided, the board of directors of any company desiring so to increase or reduce its stock shall file with the superintendent of the insurance department a certified copy of the proceedings, both of the stockholders' and directors' meetings, at which it was determined to increase or reduce such stock, and upon being satisfied that the law has been fully complied with, that the proceedings were regular, that the condition and assets of the company justify the increase or reduction, and that the same will not be prejudicial to the interests of the policyholders, the superintendent shall issue a certificate authorizing said increase or reduction, and showing that the stock of said company has been increased or reduced, the amount to which it is increased or reduced, the par value of the shares; and such certificate shall be filed and recorded as in this

chapter is provided for filing and recording the certificates of incorporation; and thereafter such company shall, with such increased or reduced capital, be subject to the same liabilities that it possessed or was subject to at the time of the increase or reduction of its capital; and the charter or certificate of incorporation of such company shall be deemed to be amended in respect to the amount of capital and the par value and number of shares, so as to conform to such increase or reduction."

Section 4546 and 4547 R. S. Mo. 1929 provide how the capital stock of any corporation may be increased respectively, as follows:

"The stock or bonds of a corporation shall be issued only for money paid, labor done or money or property actually received. Any corporation may increase its capital stock or its bonded indebtedness with the consent of the persons holding the larger amount in value of the stock, which consent to such increase shall be obtained at a meeting of the shareholders, called for that purpose, and of which meeting sixty days' public notice of the time, place and general purpose of such meeting shall be given by advertisement in a daily or weekly newspaper published in the town or city where the principal offices of the company issuing such stocks or bonds may be located. All fictitious issues or increases of stock or of bonds of any corporation shall be void."

"The notice required by the preceding section shall be published at least

once a week in some newspaper in the town, city or county in which said corporation is located, the first insertion to be not less than sixty days, the last to be not less than one nor more than six days, previous to the day on which such meeting shall be held; but if there be no newspaper published therein, then in some newspaper published in the next nearest county, and by posting up a printed handbill in the office of said company."

In the case of Johnson vs. Kruckemeyer, 224 Mo. App. 351, 29 S. W. (2nd) 730, l. c. 737, the court states the following rule of statutory construction:

" * * * As we read them, the two sections are not contradictory, and, in so far as they deal with different features of the same general subject-matter, it is our duty to read them together, and to harmonize them if possible. Betz v. Columbia Telephone Co. (Mo. App.) 24 S. W. (2d) 224; Sleyster v. Eugene Donzelot & Son (Mo. App.) 25 S. W. (2d) 147."

All of the above sections relate to the same subject-matter and when read together are in complete harmony.

In the case of State ex rel. vs. Cook, 178 Mo. 189, the court, in passing upon the question of whether it was necessary to go through the form of giving the sixty days' notice, said:

" * * * so the rule will be here announced, upon authority of the Riesterer case without further repetition of the reasons upon

which it had been predicated, that corporations in this State have by the unanimous concurrence of all the stockholders thereof, in meeting assembled, the right to increase their capital stock, or bonded indebtedness, without the necessity of going through the form of giving the sixty days' public notice of the time and place of such meeting, as the Constitution and statute designate, when all the stockholders express a waiver of such requirements. Such notice could have served no useful purpose whatever, under the facts as they are made to appear in this particular, where all stockholders of relator company were present and participated in the meeting called.

"It is our opinion that the sixty days' notice does not apply to conditions like the present, and that the construction of a constitutional or statutory provision should never be adopted which results in the requirement of useless and absurd acts, except where its terms are positive and unavoidable. * * *"

There is no statement in the enclosed certified copies of the proceedings that all the stockholders were present at the meeting so as to waive the sixty days' notice requirement. The statement that "notice" was given is insufficient. Furthermore, there is no showing that the stockholders in attendance represented "the persons holding the larger amount in value of the stock."

Conclusion

From the foregoing, we are of the opinion that the proceedings taken by the Business Men's Assurance Company

Hon. Ray B. Lucas

-6-

February 7, 1941

of America to increase its capital stock were not in compliance with the laws of our State and, therefore, invalid.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

MW:LB