

CORPORATIONS: General business corporation formed under Chapter 351
INSURANCE: RSMo 1949 may not amend Articles of Incorporation so
as to qualify as a joint stock life insurance company
subject to provisions of Sections 376.010 to 376.670
RSMo 1949.



September 19, 1957

Honorable C. Lawrence Leggett
Superintendent of the Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Leggett:

Your recent request for an opinion from this office presents the following question:

May a corporation formed in 1954 under The General and Business Corporation Law of Missouri, Chapter 351, RSMo 1949, by amendment to its Articles of Incorporation qualify as a joint stock life insurance company subject to the provisions of Sections 376.010 to 376.670 RSMo 1949?

Section 351.020 RSMo 1949 discloses that an insurance company may not be initially formed under The General and Business Corporation Law of Missouri, such statute providing:

"Corporations for profit except banking, insurance, railroad corporations, building and loan associations, saving banks and safe deposit companies, credit unions, mortgage loan companies, union stations, trust companies and exposition companies may be organized under this chapter for any lawful purpose or purposes."

The right of a general and business corporation formed under Chapter 351 RSMo 1949 to amend its articles of incorporation is spelled out in the language of Section 351.085 RSMo 1949, which provides:

"1. A corporation may amend its articles of incorporation, from time to time, in

Honorable C. Lawrence Leggett

any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or an exchange or reclassification of shares is to be made, such provisions as may be necessary to effect such change, exchange or reclassification as may be desired and as is permitted by this chapter.

"2. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as

- (1) To change its corporate name;
- (2) To change its period of duration;
- (3) To change, enlarge or diminish its corporate purposes;
- (4) To increase or decrease the number of its directors to not more than twenty-one, nor less than three;
- (5) To increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;
- (6) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued; provided, that if the par value of issued shares is increased, there shall be transferred to stated capital at the time of such increase an amount of surplus equal to the aggregate amount by which the par value is increased;
- (7) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;
- (8) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, qualifications, limitations, restrictions and special or relative rights including convertible rights in respect of all or any part of its shares, whether issued or unissued;

Honorable C. Lawrence Leggett

(9) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;

(10) To create a new class or classes of stock and to define the preferences, qualifications, limitations, restrictions, and the special or relative rights of the shares of such new class or classes."

In treating of the statutory power of amendment which is granted to corporations, we quote the following from Fletcher on Corporations, Perm. Ed., Vol. 7, Sec. 3718, p. 886:

"This granted power of amendment cannot be exercised to change the corporation in such a manner as to make an entirely different kind of a corporation, or to change substantially the objects and purposes of the corporation."

The rule that a corporation may not amend its charter in a material way without statutory authority was forcefully stated in the following language from *Whitehead v. Fire & Lightning Mutual Ins. Co.*, 60 S.W. (2d) 65, 227 Mo. App. 891, 1.c. 895, 896:

"Waiving aside the question as to whether a corporation may re-incorporate, re-charter, or amend, in a material way, its charter without the unanimous consent of its stockholders, the company, in no event, had any right to amend its charter or laws in a material manner without statutory authority and none has been given in our statute, at anytime in its history, to so do, as was attempted in this case. * * * The statute not only did not give such authority but expressly provided that 'no company now organized including only one county can come under the provisions of this article or insure property in an adjoining county.' This is not only provided by the Laws of 1919, page 385, but also by the Laws of 1927,

Honorable C. Lawrence Leggett

page 282, and the present statute. It goes without saying that the attempted amendment of its charter and by-laws undertaken in 1927 and 1931, by the defendant company, in violation of the statute, was of a fundamental, radical and vital character and cannot be tolerated." (Underscoring supplied)

The type of general business corporation with which this particular opinion is concerned is a finance company incorporated "to loan to any person, firm or corporation any of its funds, either with or without security." If the purposes of such a corporation are to be changed to that of "making insurance upon the lives of individuals, and every assurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description whatsoever, and to provide an indemnity against death, and for weekly or other periodic indemnity for disability occasioned by accident or sickness to the person of the insured", such purposes being contemplated by Section 376.010 RSMo 1949, it must be reasonably concluded that a "fundamental, radical and vital character" change is intended by the general business corporation involved. If we are not to look to the basic law of incorporation of this general business corporation for its authority to organize in the first instance as a life insurance company, or for the authority to change its original purposes, where will we go to find such authority? It has been shown in this opinion that Section 351.020 and Section 351.085 RSMo 1949 of The General and Business Corporation Law of Missouri (1) prohibits the formation of insurance companies under such corporation code and (2) allows amendments to charters of such business corporations only if such amendments "might be lawfully contained in original articles of incorporation" of such business corporation.

Attention has been directed to Section 375.030 RSMo 1949, reading in part as follows:

"* * * 2. No company organized under the provisions of this chapter, or any general law of this state, shall undertake any business or risks, except as in this chapter provided; * * *." (Underscoring supplied)

Section 375.030 RSMo 1949, from which the above quotation is extracted, is one of many statutes appearing in Chapter 375 RSMo

Honorable C. Lawrence Leggett

1949, such chapter being entitled "Provisions Applicable To All Insurance Companies." Are we permitted to conclude from the underscored phrase referring to "any general law of this state", appearing in Section 375.030 RSMo 1949, supra, that such reference gives the right to a general business corporation formed under Chapter 351 RSMo 1949 to engage in the life insurance business? It is the opinion of this office that the phrase "any general law of this state" appearing in Section 375.030 RSMo 1949, supra, has reference to any of the general laws of Missouri under which insurance companies may organize and operate.

CONCLUSION

It is the opinion of this office that a corporation formed in 1954 under The General and Business Corporation Law of Missouri, Chapter 351 RSMo 1949, may not, by an amendment to its Articles of Incorporation, qualify as a joint stock life insurance company subject to the provisions of Sections 376.010 to 376.670 RSMo 1949.

The foregoing opinion which I hereby approve was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M:hw