

INSURANCE: Superintendent of Insurance has right of visitation and examination of records and affairs of Missouri corporate attorney in fact for a domestic reciprocal or inter-insurance exchange to the extent that the records of the attorney in fact disclose the financial condition of the reciprocal or inter-insurance exchange. Failure to permit such examination is grounds for revocation or suspension of license to conduct an insurance business in Missouri through the attorney in fact.



July 3, 1958

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

Dear Mr. Leggett:

This opinion is rendered in reply to your inquiry reading as follows:

"I wish to have an official opinion on the extent of my power or authority, as Superintendent of Insurance, to examine into the affairs of a corporate Attorney-in-Fact for a reciprocal exchange doing business under the provisions of Sections 375.790 to 375.920, inclusive, RSMo 1949, as amended.

"As you know, such corporate Attorneys-in-Fact are organized under Chapter 351 of the General Corporation Laws. It has been the practice of the Division of Insurance to make regular examinations of reciprocal exchanges the same as other insurance companies under my supervision and control. My question is, does the Insurance Code, particularly Sections 375.060 and 375.070, RSMo 1949, authorize me to examine into the affairs of the corporate Attorney-in-Fact for such reciprocal exchanges? In using the term 'examine into the affairs' I intend to use it in the comprehensive sense it is used in the statutes just referred to."

Reciprocal or inter-insurance contracts are authorized by the following language from Section 375.790, RSMo 1949, as amended:

"(1) Individuals, partnerships and corporations, of this state, hereby designated subscribers, are hereby authorized to exchange

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either assessable or non-assessable reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing for indemnity among themselves, for the following purposes, to-wit: * * * ."

The single medium by and through which reciprocal or inter-insurance contracts are effected is an attorney in fact, as evidenced by the following language found in Section 375.800, RSMo 1949:

"Such contracts may be executed by an attorney in fact herein designated attorney, duly authorized and acting for such subscribers and such attorney may be a corporation. The office or offices of such attorney herein defined as an exchange, may be maintained at such place or places as may be designated by the subscribers in the power of attorney."

The real indispensability of an attorney in fact in effecting reciprocal or inter-insurance contracts is evident when we note the following language of the Supreme Court of Missouri in the case of *Yeats vs. Dodson*, 345 Mo. 196, 1.c. 204, 127 S.W.(2d) 652, as the Court quoted approvingly from *Wysong vs. Automobile Underwriters*, 204 Ind. 493, 184 N. E. 783:

"In the *Wysong* case it is said that 'there must be an attorney in fact for the reason that under the plan of insurance in question all business is done and transacted by an attorney in fact'."

Reference to Section 375.800, RSMo 1949, supra, discloses that it is the office or offices of the attorney in fact which are defined as "an exchange" and such office or offices are to be maintained at "such place or places as may be designated by the subscribers in the power of attorney."

As a condition precedent to the exchange of reciprocal or inter-insurance contracts by subscribers at the office of the attorney in fact (the exchange) such subscribers, through their attorney in fact, are required by Section 375.810, RSMo 1949, to file a verified declaration upon the oath of the attorney in fact with the superintendent of insurance disclosing, among other things, "that there is in the possession of the attorney in fact available for the payment of losses,

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assets conforming to the requirements of sections 375.840 and 375.850." Under Section 375.840, RSMo 1949, and under Section 375.850, RSMo 1949, as amended, we find rigid requirements relative to maintaining reserve funds, guaranty funds, and claim or loss reserve funds at the office of the attorney in fact (the exchange).

Section 375.870, RSMo 1949, provides for the submission of annual statements by the attorney in fact disclosing the financial condition of affairs at the office where such reciprocal or inter-insurance contracts are written and exchanged, and this statute further provides for examination, by the superintendent of insurance, into the business affairs and assets of the reciprocal or inter-insurance exchange, as shown at the office of the attorney in fact. This statute is of major importance in this opinion and consequently we quote Section 375.870, RSMo 1949, in its entirety, as follows:

"1. Such attorney shall make an annual report to the superintendent of insurance for such calendar year, showing that the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses; provided, however, that such attorney shall not be required to furnish the names and addresses of any subscribers.

"2. The business affairs and assets of said reciprocal or inter-insurance exchanges, as shown at the office of the attorney thereof, shall be subject to examination by the superintendent of insurance, as often as he sees fit and the cost thereof shall be paid by the exchange examined."

Subparagraph 2 of Section 375.870, RSMo 1949, quoted above, is clear in its language authorizing the superintendent of insurance to examine the business affairs and assets of reciprocal or inter-insurance exchanges, "as shown at the office of the attorney thereof." If such attorney in fact is a corporation, as clearly authorized by Section 375.800, RSMo 1949, supra, reason will support no other conclusion than that the superintendent may examine the corporate

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attorney in fact to the degree necessary to determine the definite status of the business affairs and assets of the reciprocal or inter-insurance exchange.

Under the provisions of Section 375.890, RSMo 1949, the annual certificate of authority issued by the superintendent of insurance, by virtue of which reciprocal or inter-insurance contracts are exchanged by subscribers at the exchange through their attorney in fact, is procured by the attorney in fact. For any such attorney in fact, whether it be individual or corporate, to refuse the superintendent of insurance the right of visitation and examination of its records pertaining in any degree to the financial condition of the reciprocal or inter-insurance exchange, for whom the attorney in fact is acting, would constitute a breach of conditions as such term is used in subparagraph 2 of Section 375.890, RSMo 1949, reading as follows:

"2. The superintendent of insurance may revoke or suspend any certificate of authority issued hereunder in case of breach of any of the conditions imposed by sections 375.790 to 375.920, after reasonable notice has been given said attorney in writing, so that he may appear and show cause why action should not be taken."

To point up the fact of inseparability of a reciprocal or inter-insurance exchange and the attorney in fact, for the purpose of regulation by the superintendent of insurance, we extract the following language from *In Re International Underwriters, Inc.*, 157 F. Supp. 367, l.c. 373:

"This gives point to the conclusion of inseparability of the Exchange and its attorney in fact. It emphasizes the reality of the attorney in fact as the actual insurer. To eliminate the existence of one deals a death blow to the other. To dissolve one dispenses with the other."

The question posed in the request for this opinion is ruled by reliance on statutes embraced within that group of statutes, Sections 375.790 to 375.920, RSMo 1949, as amended, which have special application to the operation and regulation of reciprocal or inter-insurance exchanges. Consequently, for the purpose of this opinion, it is not deemed necessary to treat Sections 375.060 and 375.070, RSMo 1949, referred to in the request for this opinion.

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CONCLUSION

It is the opinion of this office that Section 375.890, RSMo 1949, and related statutes cited, give the superintendent of insurance in Missouri the right of visitation and examination of the records and affairs of a corporate Missouri attorney in fact to the extent that such records disclose the financial condition of the reciprocal or inter-insurance exchange for whom the corporate attorney in fact is acting; and a failure by the attorney in fact to permit such an examination will constitute a breach of conditions as such term is used in subparagraph 2 of Section 375.890, RSMo 1949, with a consequent suspension or revocation of license to conduct its insurance business being the prescribed penalty.

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

Yours very truly,

John M. Dalton
Attorney General

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