

INSURANCE: Articles of Incorporation of proposed Old Reliable Fire Insurance Company are legally deficient and may not be certified under Section 379.040, RSMo 1959.

OPINION REQUEST NO. 424

December 20, 1962

Honorable Jack L. Clay,
Superintendent,
Division of Insurance,
Jefferson Building,
Jefferson City, Missouri .



Dear Mr. Clay:

This opinion is rendered in reply to your request of November 21, 1962, and touches the legal sufficiency of Articles of Incorporation of the proposed Old Reliable Fire Insurance Company. You have furnished this office with an executed copy of the Articles of Incorporation, together with proof of publication of the same as required by Section 379.040, RSMo 1959.

The declaration of intention of incorporators immediately preceding the formal Articles of Incorporation discloses the intention of the incorporators to:

"* * * organize an insurance company on the joint stock plan under the provisions of Chapter 379 of the Missouri Revised Statutes of 1959, for the purpose of doing a fire and property damage insurance business, * * *."

Section 379.040, RSMo 1959, requires that the declaration of intention of incorporators, along with the original Articles of Incorporation, are to be submitted to the Attorney General of Missouri for examination and he must determine if they are "in accordance with the provisions of sections 379.010 to 379.160, and not inconsistent with the constitution and laws of this state and the United States."

The declaration of intention states that the incorporators intend to "organize an insurance company on the joint stock plan under the provisions of Chapter 379 of the Missouri Revised Statutes of 1959." Since the company is to be formed on the "joint stock plan," we must assume that its formation will be accomplished in the light of specific provisions found at Sections 379.010 to 379.160, RSMo 1959.

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Section 379.035, RSMo 1959, designates what specific provisions shall be set forth in the Articles of Incorporation of a company formed on the joint stock plan and we here set forth such statute in its entirety:

"When such corporators propose to form a corporation for the purposes designated in section 379.010, on the joint stock plan, the articles of incorporation or association comprised in the declaration in section 379.030 shall set forth:

"(1) The name assumed by such corporation, and by which it shall be known;

"(2) The place where the principal office for the transaction of its business shall be located;

"(3) The specific kind or kinds of business which it proposes to transact;

"(4) The amount of its capital stock and the number of shares into which it shall be divided, and the manner in which it shall be paid up or secured;

"(5) The manner in which the corporate powers granted by this chapter shall be exercised, showing the number of directors, which shall not be less than nine nor more than twenty-five; and such other particulars as may be necessary to make manifest the objects and purposes of the corporation, and the manner in which it is to be conducted."

In seeking to comply with subparagraph (3) of Section 379.035, RSMo 1959, cited above, requiring that the Articles of Incorporation set forth "the specific kind or kinds of business which it proposes to transact", Article III of the Articles of Incorporation being examined treats this subject and is here set forth in full:

"The specific kind or kinds of business which it proposes to transact are:

"To make insurance on houses, buildings, mer-

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chandise, furniture and all kinds of real and personal property, against loss or damage by fire, lightning, hail, and windstorm, to cause itself to be wholly or partially reinsured against any loss arising from any risk which it may have undertaken, and to reinsure or guarantee any other insurer against loss arising from any risks that shall have been undertaken by such reinsurer, all in accordance with the authority and franchise granted by the Articles of Incorporation, and to write and issue policies upon a weekly and monthly industrial plan as well on other plans."

Under Article III of the Articles of Incorporation, quoted above, the incorporators designate in specific language that the corporation "will make insurance on houses, buildings, merchandise, furniture and all kinds of [of] real and personal property, against loss or damage by fire, lightning, hail and windstorm, * * *." We find such expressed purposes to be within the following language from Section 379.010, RSMo 1959:

"1. Any number of persons, not less than thirteen in number, a majority of whom shall be citizens of this state, may associate and form an incorporation, association or company for the following purposes, to wit:

"(1) To make insurance on houses, buildings, merchandise, furniture and all kinds of property, against loss or damage by fire, lightning, hail and windstorm * * *."

While Sections 379.010 and 379.015, RSMo 1959, authorize numerous additional risks to be insured by a joint stock company subject to Sections 379.010 to 379.160, RSMo 1959, the incorporators have chosen to limit the scope of their risks by the language quoted above from Article III of their Articles of Incorporation, and we do not challenge that portion of Article III. However, in Article III of the Articles of Incorporation, the incorporators have undertaken to clothe the corporation with power in the following language:

"* * * and to write and issue policies upon a weekly and monthly industrial plan as well on other plans."

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The declaration of intention specifically refers to Chapter 379, RSMo 1959, and discloses on its face a purpose to do a "fire and property damage insurance business". Article III of the Articles of Incorporation specifically adopts purposes set forth in sub-paragraph 1 (1) of Section 379.010, RSMo 1959. In view of such recitals we cannot escape the conclusion that the incorporators have endeavored to form a joint stock fire insurance company subject to the provisions found in Sections 379.010 to 379.160, RSMo 1959.

We here quote the following text from 44 C.J.S., Insurance Section 20, to demonstrate that insurance written on the industrial or prudential plan bears no affinity to fire insurance:

"Industrial insurance, which is sometimes designated people's insurance, prudential insurance, or family insurance, and which is said to have originated in the early guilds, friendly societies, and burial societies, is a plan of insurance under which small policies of accident, health, or life insurance are issued in consideration of weekly payments, in contradistinction to the ordinary plan of insurance, where premiums are payable annually, semiannually, or quarterly; a form of insurance written for a small limited amount payable at death, in consideration of a premium collected at short, fixed intervals; an insurance on the lives of the laboring classes for small amounts, the payments being made in weekly installments."

Sections 376.680 to 376.760, RSMo 1959, forming a portion of Missouri's Insurance code, have particular application to industrial and prudential insurance, and Section 376.680, RSMo 1959 is here set forth to further emphasize that industrial or prudential insurance is entirely foreign to fire insurance:

"Every life insurance company or association organized under the laws of this state for the purpose of carrying on and conducting an industrial or prudential life insurance business shall be governed by the provisions of sections 376.680 to 376.760."

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It must be concluded that language contained in Article III of the Articles of Incorporation of the proposed Old Reliable Fire Insurance Company seeking to confer authority on the corporation to write and issue policies of insurance on a weekly and monthly industrial plan contravenes the provisions of Sections 379.010 to 379.160, RSMo 1959, and is not consistent with the laws of Missouri.

Attention is next directed to subparagraph d) of Article VI of the Articles of Incorporation conferring power on the corporation in the following language:

"d) To purchase, organize, create, lease as lessor, lease as lessee, mortgage, encumber and otherwise convey or dispose of, manage, operate, control invest in or otherwise be financially interested in real estate and personal property, business ventures and facilities."

The powers expressed in paragraph d) of Article VI of the Articles of Incorporation are couched in the most general language which could have been employed, without reference to any statute of the Insurance Code as constituting a limitation on such powers. Employment of such general language may have been through inadvertance but such a general grant of powers without limitation cannot be viewed as being in accordance with the provisions of Sections 379.010 to 379.160, RSMo 1959, or even consistent with the laws of Missouri.

CONCLUSION

It is the opinion of the office that Articles of Incorporation, executed October 17, 1962 by original incorporators of the proposed Old Reliable Fire Insurance Company, are not drawn in accordance with the provisions of Sections 379.010 to 379.160, RSMo 1959, and are not consistent with the laws of Missouri, and consequently cannot be certified by this office as required by Section 379.040, RSMo 1959.

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

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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