

INSURANCE: Articles of Incorporation of the proposed Covenant Security Insurance Company are legally insufficient, and require amendment before certification under Section 379.040, RSMo 1959

Opinion No. 170

May 14, 1964



Honorable Ralph H. Duggins
Superintendent, Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Duggins:

This opinion is in answer to your inquiry of April 10, 1964 by which you submitted for examination and certification under Section 379.040, RSMo 1959 an executed copy of Declaration of Intention, including Articles of Incorporation, of original incorporators of the proposed Covenant Security Insurance Company.

The proposed company's basic law of incorporation is found at Sections 379.010 to 379.160, RSMo 1959, as amended. In designating the specific kind or kinds of business to be conducted, Article III of the proposed Articles of Incorporation provides:

"The corporation is empowered and authorized to make contracts of insurance, or to reinsure, or accept reinsurance on any portion thereof, of the following kinds of insurance:

"a. Insurance on horses, cattle, and other live stock against loss or damage by accident, theft, disease, or death or any other such unknown contingent event;

"b. Insurance upon the health of individuals, and against personal injury, disablement, or death, resulting from traveling or general accident by land or water and to insure the fidelity of persons holding places of public or private trust, and also to receive on deposit and insure

the safekeeping of books, papers, monies, stocks, bonds, and on [all] other kinds of personal property, and to do any and all other kinds of legitimate insurance business, excepting that of life insurance and dealing in annuities and excepting also the kinds of insurance included in the first subdivision or class named in Sub-section 1 of Section 379.010, Revised Statutes of Missouri, 1959, as amended."

Language found at "a" and "b", quoted above from Article III of the proposed Articles of Incorporation, discloses that incorporators seek to take powers and organize under both subdivisions (2) and (3) of subsection 1 of Section 379.010, RSMo 1959, as amended. To such disclosed purpose we direct the following language from subdivision 1 and subsection (3) of Section 379.010, RSMo 1959, as amended:

"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:

* * * * *

(3) * * and excepting also the kinds of insurance included in the first and second subdivisions or classes named in this subsection."

Taking powers authorized under both subdivisions (2) and (3) of subsection 1 of Section 379.010, RSMo 1959 would be authorized only upon compliance with the following language from subdivision (1) of subsection 2 of Section 379.010, RSMo 1959, as amended, reading in part, as follows:

"2. (1) No company shall be organized under more than one of the subdivisions hereof; * * * provided, however, that any stock company which has a fully paid capital of net less than four hundred thousand dollars and a surplus of at least four hundred thousand dollars * * * may commence to make insurance on all three classes of insurance enumerated in this section by amending its charter to provide such powers or by including such powers in its charter if it be a new company; * * *."

Article IV of the Articles of Incorporation of the proposed Covenant Security Insurance Company discloses that the company will be organized with a paid-up capital stock of \$200,000.00 and a paid-in surplus of \$250,000.00. Consequently, under the directives quoted above from subdivision (3) of subsection 1 of Section 379.010, RSMo 1959, as amended, and from subdivision (1) of subsection 2 of such statute last mentioned, it must be concluded that Articles of Incorporation of the proposed Covenant Security Insurance Company herein reviewed are found not to be in accordance with the provisions of Sections 379.010 to 379.160, RSMo 1959, as amended, and are therefore inconsistent with the laws of this State. The deficiencies noted in the Articles of Incorporation treated herein are such as to require amendment by original incorporators to conform to the suggestions made herein. When such amendments have been accomplished this office will issue a certificate under Section 379.040, RSMo 1959 without requiring republication of the Declaration of Intention.

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

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JLO/dg