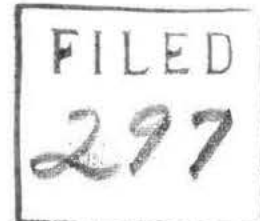


Opinion No. 297

Answered by letter

August 21, 1964



Honorable Thomas D. Graham  
State Representative  
235 East High  
Jefferson City, Missouri

Dear Mr. Graham:

We have your opinion request which in part reads as follows:

"Foreign corporations with their principal places of business in states other than Missouri engage in the mail order health insurance business with Missouri residents by mailing an application to the prospective insureds from their respective principal places of business to Missouri residents; the applicant in Missouri returns the application to the principal place of business by mail; if the application is accepted by the soliciting company, it mails the policy to the Missouri applicant, who subsequently pays his premiums by mail to the company and all communications between the company and the insured are by mail.

"The foreign insurance companies are not licensed to do business in Missouri and they have no offices, employees, agents, bank accounts, or assets in Missouri. The companies include in each policy issued to a Missouri resident language in substantially the following form:

Honorable Thomas D. Graham

"The Company agrees (1) that this Policy shall be construed and interpreted in accordance with the laws of the State in which the Insured resides, in the same manner as if the Policy were a contract made in said State; (2) that upon request of the Insured or of the Insured's counsel it will voluntarily appear and submit itself to the jurisdiction of any court of the State of the Insured's residence having jurisdiction of the subject matter for the purpose of litigating any dispute that may arise between the Company and the Insured with respect to this Policy; and (3) that in the event of the failure of the Company so to appear and submit itself to the jurisdiction of said court, proof submitted to said court that such appearance has been requested by the Insured or by the Insured's counsel, by registered mail, return receipt requested, at least thirty days prior to the return of said action, shall be sufficient proof of notice to the Company to give said court jurisdiction of the Company for the purpose of this agreement, provided under the law of said State, the Company is permitted to make a defense."

"Does Section 375.310, RSMo 1959 apply to such companies?"

Section 375.310, RSMo 1959 provides for penalties, etc. against any corporation "transacting in this state any insurance business" unless said corporation has been authorized "so to do" by the Superintendent of Insurance.

Your question really boils down to whether, under the facts as you present them to us, such a corporation is "transacting" or "doing business" in Missouri?

The matter of "doing business" in Missouri by a foreign insurance corporation was treated in an opinion of this office (copy enclosed) dated August 22, 1961, directed to Honorable Laurence Leggett, Superintendent of the Division of Insurance. We there adopted the following language from *Solby v. Crown Life Insurance Company*, Mo. App., 139 SW2d 135, 1.c. 136:

Honorable Thomas D. Graham

"It is the settled rule that where an insurance company, acting outside the state, accepts the application of a resident of the state which is sent directly to it without the intervention of any one of its agents, and thereupon issues a policy in accordance with the application, such policy is a policy of the state in which it is issued, and the company's issuance of it under such circumstances does not constitute the doing of business in the state in which the insured resides." (Emphasis supplied.)

The only facts disclosed in your opinion request which can be said to be in addition to those found in the Selby case are found in the special provision placed in the policies by the foreign company doing its mail order business. Such provision merely evidences three agreements between the insurer and the insured. The first agreement merely adopts the law of Missouri as it may apply to an interpretation of the contract. The second and third agreements merely obligate the insurer, at the request of insured or his counsel, to voluntarily appear and submit itself to the jurisdiction of any court of the State of the insured's residence for the purpose of suit under the policy, or for substituted service by mail in the event the insurer does not voluntarily appear to defend the action.

We thus construe the policy provision referred to in the preceding paragraph as being nothing more than applying the contract law of the insured's State of residence to the policy issued, and adopting a manner of securing service of process in any litigation arising under the contract which may not be as fully described in a State statute such as we find at Section 375.160, RSMo 1959.

Based upon the Selby case and the previous Attorney General's opinion (both above cited and referred to), we conclude under the facts as you pose them that such a foreign corporation is not in violation of Section 375.310, RSMo 1959.

Yours very truly,

---

THOMAS P. ENGLISH  
Attorney General