

October 16, 1964



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

Dear Mr. Duggins:

By letter dated September 30, 1964, you requested an opinion from this office pursuant to Section 377.170, RSMo 1959, as to whether documents submitted by the United Mutual Insurance Company are in proper legal form for the acceptance of the provisions of Sections 376.010 to 376.670, RSMo 1959, by a life insurance company doing business on the assessment plan under Sections 377.010 to 377.190, RSMo 1959. These documents consist of the proposed Articles of Incorporation, Minutes of Special Meeting of Board of Directors Meeting, Notice to Directors, and Certificate of Amendment.

Section 377.170, RSMo 1959, provides that the articles of incorporation shall be amended to conform to Sections 376.010 to 376.670, RSMo 1959, as if the company had originally been incorporated thereunder.

Your attention is directed to Article IV, paragraph 7 of the proposed Articles of Incorporation which provides as follows:

"The property and business of the corporation shall be managed and controlled by the Board of Directors consisting of not less than seven nor more than thirteen persons, who shall be elected at each annual meeting of shareholders. Vacancies on said board shall be filled by agreement of a majority of the directors voting on the proposition. A quorum of the board of directors shall consist of four."

Honorable Ralph H. Duggins

The above quoted provision does not conform with that part of Section 376.060, RSMo 1959, which provides that the charter shall set forth:

"(5) The manner in which the corporate powers granted by sections 376.010 to 376.670 shall be exercised, showing the number of directors, which shall not be less than nine or more than twenty-one, their powers and duties, the manner of electing them, the mode of filling vacancies, 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 order to conform to the cited statute, Article IV, paragraph 7 of the proposed Articles of Incorporation should disclose the exact number of directors to be chosen. The number must be not less than nine nor more than twenty-one and any change in the number of directors will have to be accomplished by an amendment to the Articles of Incorporation rather than by a change in the bylaws.

Your attention is also directed to Article V of the proposed Articles of Incorporation which authorizes the issuance of 1,000,000 shares of stock at a par value of \$1.00 each. It is further provided that 200,000 shares are to be issued and sold to the original purchasers for \$2.00 per share before the corporation shall commence business. The charter does not require that the remaining 800,000 shares be issued and sold before the corporation commences business.

The provisions of Article V of the proposed Articles of Incorporation referred to above do not conform to that part of Section 376.280, RSMo 1959, which provides in part that no joint stock or stock and mutual company shall commence to do any business unless the full amount of capital stock and surplus named in its charter or articles of association has been paid in.

For the reasons above stated the legal form of the proposed Articles of Incorporation of the United Mutual Insurance Company is not approved.

Honorable Ralph H. Duggins

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas J. Downey.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

TJD/dg