

INSURANCE: A life insurance company cannot accept the pro-
CORPORATIONS: visions of the General and Business Corporations
Act.

Opinion No. 200

July 15, 1965

Honorable Robert D. Scharz
Superintendent, Division of Insurance
Jefferson Building
Jefferson City, Missouri



Dear Mr. Scharz:

Reference is made to your letter of April 16, 1965,
wherein you requested an opinion from this office as follows:

"This is to courteously request the
opinion of your office as to whether
or not a life insurance company formed
under the insurance laws of the State
of Missouri may properly accept Chapter
351, R. S. Mo., 1959, * * *"

This question arises by reason of documents received in
your office on behalf of National Home Life Assurance Company
which include an amendment to the Articles of Incorporation
adopted by the Board of Directors and Stockholders as follows:

"RESOLVED: That this company accept
the general and business corporation
law of Missouri, being Chapter 351 of
Revised Statutes of the State of
Missouri, 1959 as amended."

Chapter 351 is the General and Business Corporations Act. Sec-
tion 351.025 provides as follows:

"Any existing corporation heretofore
organized for profit under any special
law of this state may accept the pro-
visions of this chapter and be entitled
to all of the rights, privileges and

benefits provided by this chapter, as well as accepting the obligations and duties imposed by this chapter, by filing with the secretary of state a certificate of acceptance of this chapter, signed by its president and secretary, duly authorized by its board of directors, and approved by the affirmative vote of a majority of its outstanding shares."

Article XI, Section 2, Constitution of 1945, prohibits the creation of a corporation by special law. A similar prohibition was contained in the Constitution of 1875, Article XII, Section 2 and in the Constitution of 1865, Article VIII, Section 4. Prior to the adoption of the Constitution of 1865, apparently it was common practice for the Legislature to grant corporate charters by special acts. Thus, prior to 1865, apparently most, if not all, of the corporations in the State came into existence by special acts of the Legislature. The provision of Section 351.025 for existing corporations organized for profit under any special law of this State to accept the provisions of Chapter 351 applies only to corporations chartered by special acts of the Legislature as discussed above.

It is assumed that National Home Life Assurance Company was not incorporated by a special act of the Legislature. It is further assumed that this company was incorporated pursuant to Chapter 376, RSMo 1959. Insurance companies are not permitted to organize under Chapter 351 pursuant to Section 351.020 as follows:

"Corporations for profit except banking, insurance, railroad corporations, building and loan associations, savings banks

and safe deposit companies, credit unions, mortgage loan companies, union stations, trust companies and exposition companies may be organized under this chapter for any lawful purpose or purposes."

Furthermore, Section 351.690 specifically limits the applicability of Chapter 351 as follows:

"The provisions of this chapter shall be applicable to existing corporations as follows:

"(1) Those provisions of this law requiring report, registration statements, antitrust affidavits, and the payment of taxes and fees, shall be applicable, to the same extent and with the same effect, to all existing corporations, domestic and foreign, which were required to make such reports, registration statements and antitrust affidavits, and to pay such taxes and fees, prior to the enactment of this law;

"(2) No provisions of this law, other than those mentioned in subdivision (1), shall be applicable to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, and nonprofit corporations;"

To summarize, Section 351.025 permits all corporations organized for profit under special laws to accept the provisions of the General and Business Corporations Act; insurance companies for profit are not permitted to organize under the act pursuant to Section 351.020; and no provisions of the act are applicable to insurance companies under Section 351.690 except to the limited extent, if any, in regard to reports, registration statements, antitrust affidavits and taxes and fees as referred to in paragraph (1) thereof. Therefore, if National Home Life Assurance

Company had been incorporated by a special act of the Legislature (we have assumed it was not so incorporated), it could not accept the provisions of Chapter 351 because, Section 351.025 notwithstanding, other provisions of the Chapter specifically exclude its applicability to insurance companies; State ex rel. City of Kirkwood v. Smith, 210 S. W. 2d 46, 1. c. 48.

CONCLUSION

It is the opinion of this office that a life insurance company formed under Chapter 376 RSMo cannot accept the provisions of Chapter 351 RSMo pursuant to Section 351.025.

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

Very truly yours,


NORMAN H. ANDERSON
Attorney General