

INSURANCE: CORPORATE NAME Foreign insurance company cannot be authorized
CORPORATIONS: NAME to do business under name same as or similar
to existing domestic or foreign insurance
company.

Opinion No. 81 (1966)

April 8, 1966

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



Dear Mr. Scharz:

Reference is made to your request for a formal opinion from this office stated as follows:

"This is to respectfully request your opinion as to whether or not the Missouri Superintendent of Insurance may refuse to license a foreign insurance company to do business in Missouri when the name of such company is the same, or deceptively similar, to a name of a domestic insurance company or other foreign insurance company licensed to do business in Missouri. We would like your opinion to encompass all types of insurance companies that come under the jurisdiction of the Division of Insurance."

The duties of the Superintendent of Insurance are set forth generally in Section 374.040, RSMo 1959. (All references to the statutes hereinafter shall be to the Missouri Revised Statutes, 1959, as amended.) Section 374.040 provides in part as follows:

"It shall be the duty of the superintendent of the insurance division * * * to issue certificates of authority to transact insurance business in this state to any companies who have fully complied with the laws of this state, * * * ."

Section 375.010 provides in part as follows:

"No company shall transact in this state any insurance business unless it shall first procure from the superintendent of the insurance division of this state a certificate stating the requirements of the insurance laws of this state have been complied with authorizing it to do business, * * * ."

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The general statutory provisions for life and accident insurance companies are set forth in Chapter 376. Section 376.030 provides as follows:

"No corporation formed under the laws of this state, concerning life assurance, shall adopt the name of any existing company or association transacting the business mentioned in section 376.010, nor any name so similar thereto as to be calculated to mislead the public."

Specific requirements of foreign insurance companies to transact life and accident insurance business in this state are set forth in Sections 376.420 through 376.470. These provisions are silent as to the use of a name the same as, or deceptively similar to, a name of a domestic insurance company or other foreign insurance company licensed to do business in Missouri.

Sections 376.680 through 376.760 relate to industrial and prudential insurance. Section 376.710 (1) provides that any such corporation shall not have the name of another corporation formed for similar purposes or any imitation of such name.

Sections 377.010 through 377.190 relate to assessment plan life insurance. Section 377.020 (3) provides in part as follows:

" * * * provided, that * * * no certificate of incorporation (shall be) issued as aforesaid until the superintendent of the insurance division shall certify that the proposed name of the corporation is not the same and does not resemble the name of any other corporations authorized to do business in this state, to the extent of misleading the public, * * * ."

Sections 377.130 through 377.160 specify requirements for foreign companies to engage in the assessment plan life insurance business in this state. These statutory provisions are silent in regard to the use of a name the same as or resembling the name of other corporations authorized to engage in similar business in this state.

Sections 377.199 through 377.460 relate to stipulated premium plan life insurance. Section 377.220 provides that the articles of agreement of such companies shall set forth:

"1. (1) The corporate name of the proposed corporation, which shall not be the name of any corporation heretofore incorporated or doing business in this state for similar purposes, or any such imitation of such name calculated to mislead the public; * * * "

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Sections 377.410 through 377.430 set forth requirements for foreign companies to engage in the stipulated premium plan life insurance business in this state. These statutes are silent as to the use of a corporate name the same as or similar to other corporations doing a similar business in this state.

The statutory provisions in regard to insurance other than life are set forth in Chapter 379. Section 379.025 provides in part as follows:

" * * * no such corporation shall adopt the name of any existing company or corporation transacting the same kind of business, or a name so similar as to be calculated to mislead the public; * * * "

Sections 379.110 through 379.135 are specific statutory requirements for foreign companies to engage in the business of insurance other than life in this state. The statutes are silent as to the use of a name by a foreign company which is the same as or similar to the name of another company engaged in the same business.

Sections 379.205 through 379.310 relate to mutual insurance companies other than life or fire insurance. Section 379.215 provides as follows:

"No name shall be adopted by such company which does not contain the word 'mutual' or which is so similar to any name already in use by any such existing corporation, company or association, organized or doing business in the United States, as to be confusing or misleading."

Section 379.280 sets forth the general requirements for foreign companies to transact the business of insurance other than life or fire insurance on the mutual plan in this state. Section 379.280 (6) provides as follows:

"(6) Its name shall not be so similar to any name already in use by any such existing corporation, company or association organized or licensed in this state as to be confusing or misleading."

Thus, the statutes in regard to the transaction of insurance business in the State of Missouri are divided into six categories classified according to the type of insurance business to be transacted. Each of these categories prohibits domestic companies from using the same name, or a similar name, as any other company. The statutes manifest a clear intention to prevent the use of names by more than one company which might mislead the public. The use of the same or a similar name by two or more companies would tend to mislead and deceive the public.

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However, with the exception of mutual companies other than life and fire, the statutes are silent in regard to the use of the same or similar name by foreign insurance companies authorized to do business in this state. Therefore, the significance, if any, of this omission must be considered.

The State of Missouri has consistently followed a liberal public policy in regard to the transaction of business in this state by foreign corporations. The Supreme Court commented upon this policy in *State ex rel Standard Tank Car Co. vs. Sullivan*, 221 SW 728, by quoting with approval *State ex rel vs. Cook*, 181 Mo. 596, 80 SW 929, as follows (221 SW, 1c 734):

"Looking to our statutory provisions for the public policy of the state, it will be readily observed that we have adopted a most liberal comity toward corporations organized under the laws of other states and countries. Indeed, we have placed them upon substantially the same footing as our own domestic corporate bodies and given them the same powers and subjected them to the same obligations that are provided for like corporations in this state, * * *" (Emphasis Added)

The court further referred to the indices of public policy as follows (l.c. 737):

"[10,11] The sources of evidence of what the policy of this state as to foreign companies is are these: The enacted laws of the state; the decisions of its courts of review; the practice of the executive department of the government; and, presumably, the purpose to preserve bonos mores by keeping out everything tending toward fraud. 8 Fletcher, §5736, p. 9376, quoting *Clark v. Railroad*, 123 Tenn. 232, 130 S.W. 751. See, also, *St. Louis Min. and Mil. Co. v. Montana Min. Co.*, 171 U.S. 655, 19 Sup. Ct. 61, 43 L. Ed. 320, and other cases cited in note 56, p. 9402. * * *"

It appears that the use of a name by a corporation does not depend upon the statutes alone. In *State ex rel Great American Home Sav. Institution vs. Lee*, 233 SW 20, l.c. 28, the court stated as follows:

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"[11] The name of a corporation or of an unincorporated association is a necessary element of its existence, and the right to its exclusive use will be protected upon the same principle that persons are protected in the use of trade-marks. State ex rel. v. McGrath, 92 Mo. 355, loc. cit. 357, 5 S.W. 29; 5 C.J. 1343 (31). * * * "

Upon the question of the use of names similar to existing corporations by foreign corporations, 20 C.J.S., Corporations, Section 1887, p. 110, states as follows:

"As a general rule, registration of a foreign corporation, or the issuance to it of a license or permit to do business within the state, may and should be refused where its corporate name is the same as, or closely similar to, that of an existing domestic corporation or of another foreign corporation already registered in the state. * * * "

As to the use of similar names generally by corporations, see 18 C.J.S., Corporations, Section 167, p. 562 et seq.

Section 375.010 requires all companies transacting insurance business in this state to procure a certificate of authority from the superintendent of the insurance division. The cited section together with Section 374.040 requires all companies engaged in the insurance business in this state to fully comply with the laws of this state in regard to the organization of insurance companies. These sections apply to foreign insurance companies with equal force as to domestic companies. Sections 376.030, 376.710, 377.020, 377.220, 379.025, and 379.215 prohibit the organization of insurance companies under a name the same as or similar to existing insurance companies. These statutory provisions are included among the provisions referred to in Sections 374.040 and 375.010, which must be fully complied with before a certificate of authority may issue to a foreign corporation as well as to a domestic corporation.

Although the courts of the State of Missouri have not ruled upon this question, a substantially similar question arose before the Court of Civil Appeals of Texas in Board of Insurance Com'rs. v. National Aid Life, 73 SW 2d 571. In ruling upon this question the court stated as follows (l.c. 672):

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"[1,2] Article 4700 vests in the Board of Insurance Commissioners, whose duty it is to issue permits to both foreign and domestic life insurance corporations to carry on such business in this state, the power to refuse a permit where the name of the subsequent domestic corporation is 'so similar to that of any other insurance company as to be likely to mislead the public.' This statute merely adopts the universal rule that equity will protect a corporation in the use of a name selected and used by it, which rule likewise applies where a subsequent corporation attempts to use a similar name to that of an existing corporation. Thompson on Corporations (3d Ed.) vol. 1, pp. 85-87, §77; Holloway v. Memphis, etc. R. Co., 23 Tex. 465, 76 Am. Dec. 68. The statutes of many states expressly adopt the rule, and it has been held, even where no such express statutory provision exists, the court, officer, or administrative or ministerial board whose duty it is to grant or refuse charters, or articles of incorporation, or certificates of authority, or permits to transact or carry on business within a state, will not permit the use by any subsequent corporation of a name similar to or so nearly like that of another corporation as would be likely to produce mistake or confusion. Philadelphia Trust, etc., Co. v. Philadelphia Trust Co. (C. C.) 123 F. 534; Thompson on Corporations (3d Ed.) vol. 1, p. 80, and cases there cited.

[3] This rule would authorize the Board of Insurance Commissioners whose regulatory power over the insurance business is broad and plenary, and whose duty it is to issue certificates of authority or permits to transact business in the state to both foreign and domestic insurance corporations, to refuse a permit to a foreign insurance corporation where its name is 'so similar to that of any other insurance company as to be likely to mislead the public.' But aside from this conclusion, it is without question the duty of the Board under the provisions of article 4700 to refuse a permit to a subsequent domestic life insurance corporation to do business in this state if its name is so similar to that of an existing corporation as to likely mislead the public dealing with the two corporations; and article 5068 makes 'the provisions of this title (title 78 of which article 4700 is a part) conditions upon which foreign insurance corporations shall be permitted to do business within this State.' It is true that article 4700 specifically relates to the incorporation of domestic insurance corporations; but this court held in the recent case of

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Fire Protection Co. of America v. State (Tex. Civ. App.) 59 S.W.(2d) 888, that article 5068, made the provisions of title 78, which included article 4700, applicable to a foreign insurance corporation doing business in this state. To hold, as contended for by appellee, that the principle forbidding similarity of name had no application, or could not be invoked against a foreign insurance corporation seeking a permit to do business in Texas, would not only give such foreign insurance corporation a great advantage over a domestic corporation of the same or a similar name, or a foreign corporation already transacting a business under a permit issued by the Board; but the necessary consequence of the subsequent foreign corporation taking the name of an existing corporation under the laws, whether a domestic or a foreign corporation with permits to do business in the state, would be to confuse or mislead the public dealing with such corporation. No good reason could exist as to why the Legislature would prohibit domestic insurance corporations from adopting similar names, and at the same time grant a permit to a foreign insurance company with a similar name to an existing insurance company. Manifestly the Legislature intended by the enactment of article 5068 to require all foreign insurance corporations to comply with all provisions and regulations required of domestic insurance corporations. Such being our conclusion, we pass to a consideration of whether the Board has abused its discretionary power in concluding that the name 'National Aid Life' is so similar to 'National Aid Life Association' as to be likely to mislead the public dealing with the two corporations.

It may be remarked that since the statute against similarity of names has merely adopted the equity rule aforementioned, cases construing such rule necessarily control."

The facts before the court were substantially the same as the facts being considered in this opinion and the provisions of the Texas statutes were similar to our Missouri statutes. This office considers the opinion to be well-reasoned, based upon sound legal principles, and fully applicable to the question under consideration.

We have been cited to the case of People ex rel Traders Ins. Co. v. Van Cleave, 183 Ill. 330, 55 NE 698. We believe that the Texas case is the better reasoned authority under the applicable facts.

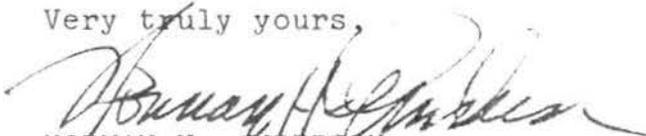
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CONCLUSION

The Superintendent of the Division of Insurance may refuse to issue a certificate of authority to transact insurance business in this state to a foreign insurance company if the name of such company is the same as, or deceptively similar to, the name of a domestic insurance company or foreign insurance company authorized to do business in Missouri.

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

Very truly yours,



NORMAN H. ANDERSON
Attorney General