INSURANCE: Neither Chapter 382, RSMo 1969, the Insurance Holding Companies Act, nor Section 375.320 of the Revised Statutes of Missouri 1969, prohibits a domestic insurer from operating a subsidiary which it acquired on March 23, 1971, and which subsidiary was organized and incorporated for the purpose of engaging generally in the automobile salvage business to dispose of salvage obtained by the insurer in the ordinary course of its insurance business.

OPINION NO. 89

June 2, 1972

FILED
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Mr. William Y. McCaskill
Superintendent
Division of Insurance
Jefferson State Office Building
Jefferson City, Missouri 65101

Dear Mr. McCaskill:

This opinion is in response to your request for an opinion from the office of the Attorney General with respect to the following inquiry:

> "Is the ownership by an insurance company organized under the laws of the State of Missouri of the stock of a business corporation organized and incorporated on March 23, 1971, under Chapter 351, R.S.Mo., for the purpose of engaging generally in the automobile salvage business prohibited by the provisions of Senate Bill 101 enacted by the 76th General Assembly (now Chapter 382, R.S.Mo.) or Section 375.320, R.S.Mo.?"

The business of insurance is a highly regulated activity within the state of Missouri. Chapters 374, 375, 376, 377, 378, 379, 380 and 382 of the Revised Statutes of Missouri are designed to regulate the insurance business. This is in accordance with the long standing Missouri authority that ". . . the insurance business so affects the public interest as to require its regulation by the state and to hold all who engage therein to strict account. . . ." Clay v. Eagle Reciprocal Exchange, 368 S.W.2d 344, 351 (Mo. 1963). See also, State ex rel. Lucas v. Blair, 144 S.W.2d 106, 109 (Mo. banc 1940), cert. denied 312 U.S. 700, 61 S.Ct. 741, 85 L.Ed. 1134; State ex rel. Missouri State Life Ins. Co. v. Hall, 52 S.W.2d 174, 177 (Mo. banc 1932); and State ex rel. Mackey v. Hyde, 286 S.W.

363, 365 (Mo. banc 1926). Your opinion request inquires whether two specific portions of the Missouri statutory law regulating insurance companies (Chapter 382 and Section 375.320) prohibit the ownership by an insurance company of stock in a business corporation engaged in the automobile salvage business.

The pertinent portion of Senate Bill No. 101 enacted by the 76th General Assembly is now Section 382.020, RSMo Supp. 1971. This section is part of the new Insurance Holding Companies Act designated Chapter 382, Revised Statutes of Missouri. The relevant portions of Section 382.020, RSMo Supp., follow:

> "1. Any domestic insurer, either by itself or in cooperation with one or more persons, may invest in, otherwise acquire or operate one or more subsidiaries engaged or registered to engage in one or more of the following businesses:
>
> * * *
>
> (3) . . . provided, however, that such services shall not include services of salvage of motor vehicles, the mechanical, body or other repair of motor vehicles and the towing or retrieval of motor vehicles;
>
> * * *
>
> "2. . . . Nothing in sections 382.010 to 382.300 shall be deemed to limit the powers of a domestic insurance company existing prior to September 28, 1971."

As is apparent from the above-quoted language, the effective date of Chapter 382 was September 28, 1971. The question you pose states that a domestic insurance company has acquired an automobile salvage subsidiary as of March 23, 1971, or prior to the effective date of Chapter 382.

Section 382.020.1(3) explicitly prohibits a domestic insurance company from operating or acquiring a subsidiary engaged in the automobile salvage business. Subsection 2 of such section, however, constitutes a grandfather clause to the effect that the Insurance Holding Companies Act should not be construed to restrict the powers of insurance companies existing prior to the effective date of said act, September 28, 1971. If, therefore, an insurance company existing prior to the effective date of the Insurance Holding Companies Act had the power to acquire or operate a subsidiary engaged in the

automobile salvage business, then the grandfather clause referred to above explicitly exempts said company from the prohibition against operating or acquiring a subsidiary engaged in such business. As a result, the resolution of your inquiry depends not on the Insurance Holding Companies Act but upon the disposition of the issue whether domestic insurance companies existing prior to the effective date of that act had the power to operate or acquire subsidiaries engaged in the business of automobile salvage.

Your opinion request further inquires whether Section 375.320, RSMo 1969, prohibits an insurance company from owning stock in an auto salvage business. That section states:

> "No insurance company formed under the laws of this state shall, directly or indirectly, deal or trade in any goods, wares, merchandise or other commodities whatsoever, except such as may be incident to and necessary in connection with the ownership and operation of property held under the provisions of sections 375.330 and 375.340."

The sections referred to in the above statute are not relevant to your inquiry as they regard the purchase, ownership, sale and exchange of real estate.

The question upon which the ultimate resolution of your inquiry must depend is whether the ownership of stock in an auto salvage business constitutes unauthorized dealing or trading "in any goods, wares, merchandise or other commodities." In paragraph 4 of your opinion request, you have indicated that the specific automobile salvage corporation prompting your inquiry is ". . . a wholly-owned subsidiary of the MFA Insurance Companies, and its sole operation is the storage, handling, dismantling, and sale of vehicles acquired by the insurance companies in carrying out their policy contract obligations." (Emphasis ours). There are no Missouri cases, nor are there any prior Attorney General opinions, which construe the language of Section 375.320. Likewise, no other statutes are available to assist us in the determination of whether the acquisition of stock by an insurance company in an auto salvage business is prohibited. Sections 375.330 and 375.340, RSMo 1969, allow an insurance company to purchase, own, sell and exchange real estate in certain specified instances. Section 375.355, RSMo 1969, permits one insurance company to acquire control of another with authorization by the Superintendent of Insurance. No other statute, prior to the effective date of the Insurance Holding Companies Act, expressly granted the power to an insurance company to participate in a business other than that of insurance or to acquire an interest in a corporation participating in another business. However, we

have concluded that the implied powers of an insurance company authorize the acquisition of an automobile salvage corporation which disposes solely of automobile salvage acquired in the ordinary course of the insurance business.

The leading Missouri case regarding the implied powers of corporations is Mutual Bank & Trust Co. v. Shaffner, 248 S.W.2d 585 (Mo. 1952). That case provides that:

> ". . . ' . . . a corporation possesses only such powers as are expressly or fairly implied in the statute by or under which it is created'. . . . implied powers 'are defined to be those possessed by a corporation, not indispensably necessary to carry into effect others expressly granted, and comprise all that are appropriate, convenient, and suitable for that purpose, including as an incidental right a reasonable choice of the means to be employed in putting into practical effect this class of powers.' . . ." Id. at 589

The above-quoted case held that it was within the implied powers of a bank to pay premiums on group life insurance policies designed to pay the difference between the face amount of a savings certificate issued a purchaser by the bank and the amount contributed toward the purchase price at the time of the purchaser's death. In the case of Fleckner v. The Bank of the United States, 21 U.S. (8 Wheat.) 338, 5 L.Ed. 631 (1823), the United States Supreme Court construed language such as that used in Section 375.320. That case involved the purchase by a bank of a promissory note. The court construed a prohibition against merchandising as follows:

> ". . . It aims to interdict the bank from doing the ordinary business of a trader or merchant, in buying and selling goods, etc., for profit, and uses the words 'deal' and 'trade,' in contradistinction to purchases, made for the accommodation or use of the bank, or resulting from its ordinary banking operations. . . ." Id. at 634

We believe that an insurance company has the implied power, either by itself or through a subsidiary corporation, to obtain the best return it can on the goods or commodities it has been forced to take as part of its business of conducting an insurance operation and settling claims. An insurance company, which writes automobile liability or automobile collision insurance policies,

can dispose of automobile salvage acquired in the ordinary course of business from either their policyholders or from claimants against those they insure. As stated in Mutual Bank & Trust Co. v. Shaffner, supra, at 589, in disposing of said salvage, an insurance company has "'. . . ' . . . as an incidental right a reasonable choice of the means to be employed in putting into practical effect this class of powers.' . . ." We do not believe that Section 375.320 prohibits an insurance company from acquiring ownership of stock in an automobile salvage corporation.

Your opinion request was limited to whether Senate Bill No. 101 enacted by the 76th General Assembly or Section 375.320, RSMo 1969, prohibits an insurance company from operating a subsidiary engaged in the automobile salvage business which it acquired on March 23, 1971. As stated above, we have concluded that neither of those statutory provisions precludes an insurance company from operating such a subsidiary. It should not be implied from this opinion that a subsidiary corporation of an insurance company has any further powers than those expressly discussed in this opinion and in your opinion request. That is, an insurance company may operate a subsidiary, the stock in which was purchased by said insurance company on March 23, 1971, which subsidiary is engaged in the limited commercial enterprise of disposing of vehicles which the parent insurance company has acquired in connection with its insurance business. The disposition of such vehicles by this subsidiary can be by means of an automobile salvage operation.

CONCLUSION

It is, therefore, the opinion of this office that neither Chapter 382, RSMo 1969, the Insurance Holding Companies Act, nor Section 375.320 of the Revised Statutes of Missouri 1969, prohibits a domestic insurer from operating a subsidiary which it acquired on March 23, 1971, and which subsidiary was organized and incorporated for the purpose of engaging generally in the automobile salvage business to dispose of salvage obtained by the insurer in the ordinary course of its insurance business.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Michael L. Boicourt.

Yours very truly,

JOHN C. DANFORTH
Attorney General