

CORPORATIONS:

FOREIGN INSURANCE - Upon statutory conformance, a foreign insurance company becomes an inhabitant of the state of Missouri and may invoke the use of Sec. 8488 R. S. Mo., '39.

January 22, 1942

Hon. Charles S. Greenwood
Prosecuting Attorney
Livingston County
Chillicothe, Missouri



Dear Sir:

We are in receipt of your request for an opinion as of January 20, 1942, which request reads as follows:

"A foreign insurance company, licensed to do business in this state, took some land by foreclosure of a mortgage. This land is land locked and has no outlet or or way to a public road. It has filed a petition with the County Court asking for a way of necessity under Section 8488 Revised Statutes, 1939. This Section provides that any 'inhabitant' of the state who is the owner of land, may present his petition setting forth that he has no outlet to the public road and ask for the establishment of a private road from his premises to connect with the public road.

"I would like to have an opinion as to whether or not this insurance company is an 'inhabitant' within the meaning of this section."

We note from reading the above request that the foreign insurance company to which you refer, has fully complied with the laws of Missouri and has received its license to

do business in this State. We presume that the company is the purchaser of a tract of land which it procured from the force of subdivision 4, of Section 6029 R. S. Mo., 1939, which subdivision provides:

"No insurance company formed under the laws of this state shall be permitted to purchase, hold or convey real estate, excepting for the purpose and in the manner herein set forth, to-wit: * * fourth, such as shall have been purchased at sales upon the judgments, decrees or mortgages obtained or made for such debts. * * * "

Upon becoming the record title owner to the tract of land in question, and finding that it did not have a way of ingress and egress to said tract of land it endeavored to invoke the use of Section 8488 R. S. Missouri, 1939, which provides as follows:

"If any inhabitant of this state shall present a petition to the county court of the proper county, setting forth that he or she is the owner of a tract or lot of land in such county, or in an adjoining county, and that no public road passes through or alongside said tract or lot of land, and asking for the establishment of a private road from his or her premises, to connect at some convenient point with some public road of the county, or with any road of the state highway system within the county, in which the proceedings are had, and shall describe the place where said road is desired, and the width desired, not exceeding forty feet, the court shall appoint three disinterested commissioners to view the premises and to mark out the road, and to assess the damages

to the owner or owners of the land through which it will pass. Any number of persons may join in such petition: **Provided**, however, that the proceedings shall always be had in the county in which the premises are situated over which said proposed road is to pass."

We have taken occasion to trace the history of Section 8488, supra, and find that in 1845 there existed a statute which provided, in substance, that if a person owned land totally surrounded by other lands without any way of ingress or egress, that he, or she, could petition the county court and a method of procedure was set up similar to that provided for in Section 8488, supra. In the year 1846 the legislature enacted a new section which also was in substance similar to the present Section 8488, supra. It will be particularly noted that in the section that was enacted in 1846, as well as the present section, the legislature used the word "inhabitant". Therefore, we take up the question of whether or not a foreign insurance company which has conformed to the laws of the state of Missouri does through the compliance with the statutes immediately become an inhabitant of the state of Missouri. 31 C. J. p. 1194, defines the word "inhabitant" as follows:

"A. In General. The term 'inhabitant' is derived from the Latin word 'habito' or 'habitare.' No exact definition can be given of the word 'inhabitant' as applicable to all cases. It has many meanings, being a word of great variation of meaning. Its construction has generally been governed by the connection in which it is used; for, by itself, it has no definite meaning.
* * * "

In the case of *The Bank of the United States v. Deveaux et al.*, 3 U. S., (L. Ed., 5-9 Cranch) 61, l. c. 87, the court had this to say:

"The statute of Henry VIII. concerning bridges and highways, enacts, that bridges and highways shall be made and repaired by the 'inhabitants of the city, shire, or riding,' and that the justices shall have power to tax every 'inhabitant of such city,' &c., and that the collectors may 'distrain every such inhabitant as shall be taxed and refuse payment thereof, in his lands, goods and chattels.'

"Under this statute those have been construed inhabitants who hold lands within the city where the bridge to be repaired lies, although they reside elsewhere.

"Lord Coke says, 'every corporation and body politic residing in any county, riding, city, or town corporate, or having lands or tenements in any shire, quae propriis manibus et sumptibus possident et habent, are said to be inhabitants there, within the purview of this statute.' * * "

In the case of *the Home Insurance Company v. The City Council v. Augusta*, 50 Ga. 530, l. c. 541, followed the reasoning of the *Bank of the United States* case, supra.

Again, in the case of *Shainwald v. Davids et al.*, 69 F. 704, l. c. 706, the court had this to say:

"The real proposition was that the corporation, by complying with a state

statute requiring the appointment of an agent within the state upon whom process might be served, thereby submitted itself to the jurisdiction of the courts held within that state. In this respect, the corporation became as much an 'inhabitant' of the state as it did a person 'found' within the state, because it had agreed to be sued there. By the appointment of an agent in this state under the provisions of section 616 of the Political Code, the Home Insurance Company has distinctly agreed with the people of this state that summons and other process may be served upon it in all actions or legal proceedings against the company, and that all process so served gives jurisdiction over the person of such company. For all purposes of legal proceedings, the company is, therefore, an 'inhabitant' of this state. * * *

Again, we wish to call attention to the case of Southern Illinois & M. Bridge Co., v. Stone, 73 S. W. 453, l. c. 457, 459, 461, where the court said:

"* * * It is unquestionably true that when a private corporation, whether foreign or domestic, asserts the right to exercise the power of eminent domain, it must show that the right has been given it in express terms or by necessary implication. * * *"

"The language of section 1024, Rev. St. 1899, is explicit that it 'shall be subjected to all the liabilities and restrictions and duties which are or may be imposed upon corporations of like character, organized under the general laws of this state,' and 'shall have no other or

greater powers'; i. e., it shall have those of corporations of like character in this state. * * * *
* * * "The manifest and only purpose was to produce uniformity in the powers, liabilities, duties, and restrictions of foreign and domestic corporations of like character, and bring them all under the influence of the same law." From this it would seem that a foreign corporation doing business in this state possesses the same but no greater powers than a corporation organized under our statute.
* * * * * . ' * * * * *

"So in this case the plaintiff produced a charter to build a bridge over the Mississippi river, one end of which was to be in this state. Here is the general authority to build a bridge. It is at once obvious that under this Illinois charter, as such, no power was conferred to either purchase or condemn or hold real estate in this state, unless our laws should permit it to do so; but, having the right to construct the bridge so far as Illinois could give it, it must depend upon our laws to acquire its abutment, approaches, and roadways in this state, and we have given it exactly the same power to acquire the necessary land for that purpose which our bridge companies have.
* * * * *. It follows that in our opinion the plaintiff was entitled to condemn the lands described in its petition for its approaches and necessary roadway, and that the circuit court erred in dismissing its petition."

Hon. Charles S. Greenwood

-7-

January 22, 1942

From the reading of the latter case it will be observed that a foreign insurance corporation which has complied with the laws of the state of Missouri, and procured a license to do business in this state stands on an equal footing with domestic corporations of the same kind, and as we have shown such foreign corporation is also to be considered as an "inhabitant" of the state of Missouri, upon procuring the license to do business. See State ex rel Hennings v. Williams, 131 S. W. (2d) 561, l. c. 564.

CONCLUSION

We are of the opinion that upon compliance with the Missouri Statutes a foreign insurance corporation becomes an inhabitant of the state of Missouri, and may invoke the use of Section 8488 R. S. Missouri, 1939.

Respectfully submitted

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

BRC:RW