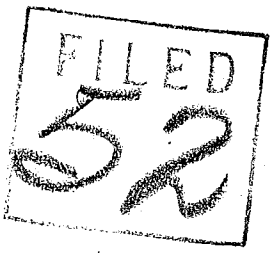
INSURANCE: Stipulated premium plan life insurance companies subject to Secs. 375.330 and 376.300 RSMo 1949. Restrictive provisions in Sec. 375.330 touching purchase of realty do not apply to acquisition by gift without valuable consideration, but do apply to subsequent holding and conveying of such real estate. Common capital stock of holding company may be acquired by gift without valuable consideration by stipulated premium plan life insurance company, but subsequent holding of such stock violates Sec. 376.300 RSMo 1949. Method of valuation of real estate acquired by stipulated premium plan life insurance company by gift is not prescribed by statute, and must be left to discretion of Superintendent of the Division of Insurance and company officers.



December 30, 1955

Honorable C. Lawrence Leggett
Superintendent of the Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Sir:

This opinion is being rendered in reply to your request reading as follows:

> "The National Bellas Hess Life Insurance Company is a stipulated premium plan life insurance company, organized and doing business under Chapter 377, Revised Statutes of Missouri 1949. It has a capital of $25,000 and is wholly owned by National Bellas Hess, Inc., a general business corporation located in North Kansas City, Missouri.
>
> "On April 1, 1955, the parent corporation transferred certain real estate and common stock to the life insurance company. The common stock referred to is stock in holding corporations, the sole assets of each such corporation being real estate. For a more complete description of the properties and common stock, please refer to Schedule A, attached to the Memorandum of the captioned company, which is enclosed herewith. It will be noted that one parcel of real estate is being occupied by the life insurance company as home office property. The acquisition of this property was without prior approval of the Superintendent of Insurance.

> "I respectfully request your official opinion as to whether or not Sections 375.330 and 376.300, respectively, Revised Statutes of Missouri 1949, have any application to the acquisition by gift and the subsequent retention of the real estate and common stock by the National Bellas Hess Life Insurance Company, and, further, if such sections do apply, what is their effect on such acquisition and retention.
>
> "In the event this insurance company is permitted under the statutes to hold this real estate, I would appreciate your further opinion as to the method of valuation thereof; whether it should be carried at equity value, market value, or, in the case of the home office property, at an arbitrary book value not to exceed the amount of its capital stock.
>
> "I am enclosing a Memorandum from this company on this question and would appreciate its return when you are finished with it."

It stands conceded that the insurance company with which this opinion deals is a stipulated premium plan life insurance company formed under Chapter 377 RSMo 1949. Since the company was organized in January, 1954, its capital stock has become wholly owned by National Bellas Hess, Incorporated, a general business corporation. On or about April 1, 1955, the general business corporation caused to be transferred to the insurance company certain assets, referred to as "a donation to surplus, i.e., as a gift", described as follows:

> "Parcel A: 715 Armour Road (land and building) to which fee title is now held; Life Co. is housed there."
>
> "Parcel B: Armour Road vacant land adjoining (and originally part of) Parcel A; fee title is now held; under contract of sale."
>
> "Parcel C: 14th and Swift (Beverly property) - land and building - fee title to which is now held; income producing."
>
> "Item D: 16th and Swift (Martina property)

> where 100% of the common capital stock (the only class of stock) of Martina Holding Corporation is owned, Martina in turn owning the fee title to land and building; adjoins the Beverly property."

Sections 375.330 and 376.300 RSMo 1949, referred to in the third paragraph of the opinion request, are not to be found in the statutes particularly applicable to the organization and operation of a stipulated premium plan life insurance company, and our first question to be decided is the applicability of such statutes to a stipulated premium plan life insurance company.

We first discuss Section 375.330 RSMo 1949. The statute must be read in its entirety to fully appreciate its scope and purpose. It reads as follows:

> "1. 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:
>
> "(1) Such as shall be necessary for its accommodation in the transaction of its business; provided, that before the purchase of real estate for any such purpose, the approval of the superintendent of the division of insurance must be first had and obtained and in no event shall the value of such real estate, together with all appurtenances thereto, purchased for such purpose
>
> "(a) If a stock company, exceed the amount of its capital stock;
>
> "(b) If a fire or casualty company, but not a stock company, exceed sixty per cent of its surplus or ten per cent of its admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed with the superintendent of the division of insurance, whichever is the lesser; or

"(c) If any other type or kind of insurance company, exceed sixty per cent of its surplus or five per cent of its admitted assets, as shown by its last annual statement, which ever is the lesser; and provided further, that

"(d) Any insurance company formed under the laws of this state, except a stock company, may with the approval of the superintendent of the division of insurance purchase such real estate as shall be necessary for its accommodation in the transaction of its business and having a value in excess of the foregoing limitations but not in excess of one hundred thousand dollars; or,

"(2) Such as shall have been mortgaged in good faith by way of security for loans previously contracted, or for moneys due; or,

"(3) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

"(4) Such as shall have been purchased at sales upon the judgments, decrees or mortgages obtained or made for such debts; or,

"(5) Such as shall be necessary and proper for carrying on its legitimate business under the provisions of the Urban Redevelopment Corporations Act; or,

"(6) Such as shall have been acquired under the provisions of the Urban Redevelopment Corporations Act permitting such company to purchase, own, hold or convey real estate; or,

"(7) Such real estate, or any interest therein, as may be acquired or held by it by purchase, lease or otherwise, as an investment for the production of income,

which real estate or interest therein may thereafter be held, improved, developed, maintained, managed, leased, sold or conveyed by it as real estate necessary and proper for carrying on its legitimate business.

"2. Provided, that investments hereunder shall only be in new business or new industrial properties or for new residential properties or new housing purposes, the approval of the superintendent of the division of insurance first having been obtained.

"3. Provided, no such insurance company shall invest more than five per cent of its admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed with the superintendent of the division of insurance of the state of Missouri, in the total amount of real estate acquired under subdivision (7) of subsection 1 of this section.

"4. And it shall not be lawful for any company incorporated as aforesaid to purchase, hold or convey real estate in any other case or for any other purpose; and all such real estate acquired in payment of a debt, by foreclosure or otherwise, and real estate exchanged therefor, shall be sold and disposed of within ten years after such company shall have acquired absolute title to the same, unless the company owning such real estate or interest therein shall elect to hold it pursuant to subdivision (7) of subsection 1 of this section.

"5. The superintendent of the division of insurance, may for good cause shown, extend the time for holding such real estate acquired in payment of a debt, by foreclosure or otherwise, and real estate exchanged therefor, and not held by the company under subdivision (7) of subsection 1 above, for such period as he may find to be to the best interest of the policyholders of said company."

The statute just quoted above treats exclusively the subject of purchasing, holding or conveying real estate. It is a statute which prohibits, and is directed to any insurance company formed under the laws of Missouri, and is contained in Chapter 375 RSMo 1949 entitled "provisions applicable to all insurance companies." Of utmost importance to this question is the language contained in Section 377.200 RSMo 1949, the first statute found in Missouri's stipulated premium plan life insurance company law (Secs. 377.200-377.460 RSMo 1949), and we quote the statute in its entirety:

> "Any corporation, company or association issuing policies or certificates promising money or other benefits to a member or policyholder, or upon his decease, to his legal representatives, or to beneficiaries designated by him, which money or benefit is derived from stipulated premiums collected in advance from its members or policyholders, and from interest and other accumulations and wherein the money or other benefits so realized is applied to or accumulated solely for the use and purposes of the corporation as herein specified, and for the necessary expenses of the corporation, and the prosecution and enlargement of its business, and which shall comply with all the provisions of sections 377.200 to 377.460, shall be deemed to be engaged in the business of life insurance upon the stipulated premium plan and shall be subject only to the provisions of sections 377.200 to 377.460, except that the provisions of sections 374.090 to 374.110, 374.140, 374.190, 374.210 to 374.230, and 375.420, RSMo 1949, shall be applicable. It shall be unlawful for any corporation, company or association not having complied with the provisions of sections 377.200 to 377.460 to use the term 'stipulated premium' in its application or contracts, or to print or write the same in its policies or literature."

The statute just quoted, above, was construed by the Supreme Court of Missouri as late as March 8, 1954, in the case of Old Reliable Atlas Life Society v. Leggett, 265 S.W. (2d) 302. We cite and quote from this recent case for the reason that in such case Section 377.200 RSMo 1949 was reviewed

in the light of its possible limitation on the applicability of certain statutes found in Chapters 374 and 375 of Missouri's Insurance Code. The plaintiff in the action was a Missouri life insurance company formed under Missouri's stipulated premium plan life insurance company law, Sections 377.200 - 377.460 RSMo 1949. In the Old Reliable case, cited supra, the main contention of the plaintiff-appellant is clearly stated in the following language found at 265 S.W. (2d) 302, l.c. 311:

> "Appellant argues that in every instance where the courts have been called upon to interpret the meaning of Sec. 377.200 which defines the powers and duties of stipulated premium plan life insurance companies, they have held such companies not subject to any statutory provisions other than those set out in that section."

A reading of Section 377.200 RSMo 1949 discloses that Section 375.330 RSMo 1949 is not referred to in the former statute. In holding that Chapters 374 and 375 RSMo 1949, are applicable to insurance companies formed on the stipulated premium plan life insurance law (Secs. 377.200 - 377.460 RSMo 1949), the Court spoke as follows at 265 S.W. (2d) 302, l.c. 312:

> "But notwithstanding these three decisions on collateral matters paragraph J-2 of the trial court's decree in this case held that the provisions of Secs. 377.200-460, RSMo 1949, V.A.M.S., dealing with stipulated premium plan life insurance, are not a code within themselves insofar as the powers and duties of the Superintendent are concerned. On the contrary the decree held the <u>supervisory</u> powers and duties of the Superintendent include those provided for in Chapter 375, RSMo 1949, V.A.M.S., applicable to all insurance companies, in particular Sec. 375.560 providing for the winding up of insurance companies, and Sec. 375.640 authorizing the Superintendent to take charge of them. And it further declared it was the legislative intent to give the Superintendent the same regulatory powers

> over the plaintiff-appellant Old Reliable Society and other companies operating on the stipulated premium plan that he possesses with respect to insurance companies operating on other plans."

From the opinion in the Old Reliable case, cited supra, we conclude that in those instances where statutes are to be found in Chapters 374 and 375 RSMo 1949, dealing with supervisory and regulatory powers of the Superintendent of the Division of Insurance, as distinguished from those having relation to (a) the charter power of the company to contract with its policyholders or (b) to a prohibition against a company's invasion of fields of insurance other than life insurance on the stipulated premium plan, such statutes are to be held applicable to companies formed under the stipulated premium plan life company law (Secs. 377.200 - 377.460 RSMo 1949), unless statutes in such special law specifically refer to statutes of the general law from which stipulated premium plan life companies are to be exempt.

In Section 375.330 RSMo 1949, do we have a statute disclosing supervisory or regulatory power of the Superintendent of the Division of Insurance? When we consider the statute's general prohibition against purchasing, holding or conveying real estate, followed as it is by a directive that before any purchase is made the approval of the Superintendent of the Division of Insurance is required, and also followed by stated rules to be applied in qualifying such purchases, we deem the statute to clothe the Superintendent with both supervisory and regulatory power, and it is concluded that Section 375.330 RSMo 1949 is applicable to a stipulated premium plan life insurance company.

The opinion request next brings into question the applicability of Section 376.300 RSMo 1949, as amended (Laws 1953, p. 235, and H.B. No. 231, 68th General Assembly, 1955), to the fact situation presented. This statute is found in Missouri's general life and accident insurance company law at Chapter 376 RSMo 1949, and lays down rules for the investment of surplus and reserve funds of life insurance companies. The broad language found in the forepart of Section 376.300 RSMo 1949 is indicative of the purpose and scope of such statute, and we quote the mandate as follows:

> "1. All other laws to the contrary notwithstanding, the capital, reserve and surplus of all life insurance companies of whatever kind and character organized under the laws of this state, shall be invested only in the following: * * *"

We are immediately faced with the fact that Section 376.300 RSMo 1949, as amended, is found in Missouri's regular life law, Chapter 376 RSMo 1949, rather than in our stipulated premium plan life insurance company law, Chapter 377 RSMo 1949; nor is it found in Chapter 375 RSMo 1949, entitled "provisions applicable to all insurance companies." In view of the broad langauge contained in the forepart of this statute, Section 376.300 RSMo 1949, quoted above, its present placement in the regular life law at Chapter 376 RSMo 1949, rather than in Chapter 375 RSMo 1949, is unfortunate. However, a short review of the legislative history of this statute will disclose that its present placement in no way lessens the applicability of its language to a company formed under Missouri's stipulated premium plan life insurance company law found at Sections 377.200 to 377.460 RSMo 1949.

In 1945 the legislature passed Senate Bill No. 90 (L-1945, p. 995) repealing Sections 6031 and 6032, of Article 10, Chapter 37, Revised Statutes of Missouri, 1939, relating to the investment of funds of life insurance companies organized under any law of this state, and enacted one new section relating to the same subject matter and to be numbered and known as Section 6032. It cannot be disputed that at the time of such repeal of Sections 6031 and 6032, and the enactment of the one new Section 6032, such statute continued to remain a part of Article 10, Chapter 37, R. S. Mo. 1939, such Article 10 being entitled "general provisions." Senate Bill No. 90, supra, was approved October 12, 1945, and at such time we find the first provision of the new Section 6032 reading as follows:

> "All other laws to the contrary notwithstanding the capital reserve and surplus of all life insurance companies of whatever kind and character organized under the laws of this state, shall be invested only in the following."

Two paragraphs were added to Section 6032, supra, by Senate Bill No. 321 (L. 1945, p. 1004), approved March 26, 1946, but no change whatever was made in the above quoted language,

and the statute remained a part of the "general provisions" applicable to all insurance companies and was found in Article 10, Chapter 37, R.S. Mo. 1939. In 1949, Senate Bill No. 117 (L. 1949, p. 305) amended Section 6032 as it appeared in Senate Bill No. 321 (L. 1945, p. 1004), and such amendment did not repeal and reenact, but only amended the section and again referred to such statute as Section 6032. This amendment was approved August 10, 1949, and the forepart of the statute continued to read as follows:

> "All other laws to the contrary notwithstanding, the capital, reserve and surplus of all life insurance companies of whatever kind and character organized under the laws of this state shall be invested only in the following: * * *"

It is in the 1949 Revised Statutes that we find Section 6032, R. S. Mo. 1939, disappearing from the "general provisions" of the insurance code and appearing as Section 376.300 RSMo 1949 in Missouri's regular life insurance company law. Section 1.120 RSMo 1949, provides:

> "The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of prior laws, shall be construed as a continuation of such laws and not as new enactments."

In this instance we adopt the general rule as reflected in the following language from State ex rel. Sharp v. Knight, 26 S.W. (2d) 1011, 224 Mo. App. 761, l.c. 768:

> "The holding in that case as well as the Gantt case is authority for the proposition that the mere arrangement or codification of the statutes by the Legislature, which under our Constitution now takes place every ten years, does not change the applicability of a particular statute as it stood when it was enacted."

Under the foregoing rule quoted from State ex rel. Sharp v. Knight, supra, and in view of the provisions of Section 1.120 RSMo 1949, heretofore quoted, it must be concluded that Section 376.300 RSMo 1949 is to be construed as though it is part and parcel of Chapter 375 RSMo 1949, such chapter being entitled "provisions applicable to all insurance companies." The statute's

original source and present language confirm this reasoning.

Having concluded that Section 376.300 RSMo 1949 is to be construed as though it is a part of Chapter 375 RSMo 1949, its applicability to a stipulated premium plan life insurance company formed under Sections 377.200 to 377.460 RSMo 1949 is for determination.

Section 376.300 RSMo 1949, as amended, Laws 1953, p. 235, and as further amended by House Bill No. 231, 68th General Assembly, treats solely of the investment of capital, reserve and surplus of all life insurance companies. This statute is of great length and it is not necessary to copy it into this opinion. It is replete with definite directives touching the only types of securities in which insurance companies may invest their capital, reserve, and surplus, save and except their power to purchase and own real estate, which power has previously been discussed in the earlier part of this opinion when Section 375.330 RSMo 1949, was held applicable to a stipulated premium plan life insurance company. Without discussing the several provisions of Section 376.300 RSMo 1949, it is only necessary to state that such statute brings into play the regulatory and supervisory powers of the Superintendent of the Division of Insurance in relation to insurance companies' investments, as distinguished from charter powers of the insurance companies to contract with their policyholders; and under the ruling in the Old Reliable case, heretofore adopted in this opinion when construing the affect of Section 375.330 on a stipulated premium plan life insurance company, it is concluded that Section 376.300 RSMo 1949 is fully applicable to a stipulated premium plan life insurance company.

Having ruled that Sections 375.330 and 376.300 RSMo 1949, as amended, are applicable to a stipulated premium plan life insurance company formed under Sections 377.200 to 377.460 RSMo 1949, the next question posed goes to the right of a stipulated premium plan life insurance company to acquire by gift, retain and invest property which it could not, under the statutes being construed, purchase, retain and invest. We first consider the question of acquisition, as differing from the separate problems touching retention and investment.

The first provision of Section 375.330 RSMo 1949 reads as follows:

> "1. 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: * * *". (Underscoring supplied).

Does the word "purchase" as used in the foregoing quotation prohibit an insurance company from accepting real or personal property as a gift? No statutory prohibition against an insurance company's taking of real or personal property by gift has been discovered. In the case of Shepard Paint Co. v. Board of Trustees, 88 Ohio App. 319, 100 N.E. (2d) 248, l.c. 251, reference to the authorities on the meaning of the word "purchase" is made in the following language:

> "The authorities seem to be in agreement that the word 'purchase,' has two significations, a popular but restricted one and a legal but enlarged one. A 'purchase' in the popular acceptance of the term is the transfer of property from one person to another by his voluntary act and agreement founded upon a valuable consideration. The legal or enlarged definition is found in 3 Washburn, Real Property (6th Ed.) 3, Section 1824: 'Purchase including every mode of acquisition known to the law, except that by which an heir, on the death of an ancestor becomes substituted in his place as owner by the act of the law.'"

The use of the word "purchase" in the first provision of Section 375.330 RSMo 1949, quoted above, does not suggest that the word should be construed in any other than its plain, ordinary and usual sense, and consequently in this instance we follow the rule laid down in Section 1.090 RSMo 1949, as follows:

> "Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

It is concluded that Section 375.330 RSMo 1949, does not prohibit an insurance company subject to such statute from acquiring, by gift without valuable consideration, real property donated to it.

Consideration is next given to the right of an insurance company, which is subject to Section 375.330 RSMo 1949, to hold and convey real property it has received by gift. Once the insurance company has acquired real property by gift it immediately becomes a part of the assets of such company. This being so, the holding of the same must be subject to all provisions of Section 375.330 RSMo 1949, for the mere holding of the real property represents an investment of the company's assets. No citation of authority is needed on this point. If the holding of such real estate is not consistent with the directives found in Section 375.330 RSMo 1949, the real property should be converted into an asset which the company may hold.

From the opinion request it is noted that one of the items comprehended in the "gift" to the stipulated premium plan life insurance company is all of the common capital stock of Martina Holding Corporation, which corporation owns the fee title to one tract of real estate adjoining a specific tract which was included in the "gift" of real property to the stipulated premium plan life insurance company. The right of the company to accept this common stock as a "gift" must be ruled in favor of its reception by the stipulated premium plan life insurance company upon the same reasoning heretofore applied to real property donated to the company. However, once having acquired the common stock it certainly comes within the terms "capital, reserve and surplus" as they are used in Section 376.300 RSMo 1949, and for any such capital, reserve or surplus to be invested in common capital stock which is not preferred, guaranteed or insured as required by such statute, would be an enlargement of the specific provisions of Section 376.300 RSMo 1949, and the common capital stock should be converted to an asset which may be owned and retained under such statute.

The final question posed in the opinion inquiry seeks a ruling directing the method to be used by the Superintendent of the Division of Insurance in placing a value on any portion of the "gift" property which it is permissible for the stipulated premium plan life insurance company to hold under Sections 375.330 and 376.300 RSMo 1949. Section 376.320 RSMo 1949 directs how bonds or evidences of debt held by a life insurance company doing business in Missouri are to be valued. No statutory directive has been found prescribing a rule for placing a value on unencumbered real estate owned by an insurance company. Such a determination would involve diverse fact situations and well recognized practices within the insurance industry, and should, in the absence of a positive statutory directive, be left to the discretion of the Superintendent of the Division of Insurance and company officers who must on occasion place a valuation on such property.

Honorable C. Lawrence Leggett

CONCLUSION

It is the opinion of this office that Sections 375.330 and 376.300 RSMo 1949, as amended, are applicable to a stipulated premium plan life insurance company formed under Sections 377.200 to 377.460 RSMo 1949; that restrictions found in Section 375.330 RSMo 1949 affecting the purchase of real estate do not apply to an acquisition by "gift" without valuable consideration, but the subsequent holding and conveying of such real estate is subject to the restrictions found in such statute; that common capital stock of a holding company may be acquired by a stipulated premium plan life insurance company by "gift" without valuable consideration, without violating Section 376.300 RSMo 1949, as amended, but the subsequent holding of the common capital stock will violate such statute; and valuation of real estate acquired by a stipulated premium plan life insurance company is not regulated by statute, and must be arrived at by the exercise of discretion on the part of the Superintendent of the Division of Insurance and the company's officers when occasion demands such a valuation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M:vlw