INSURANCE: Mutual stipulated premium companies can not be licensed. Charters of insurance companies are not forfeited because of non-user.

February 3, 1940

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Honorable Ray B. Lucas
Superintendent of Insurance
Jefferson City, Missouri

Attention: Charles L. Henson,
Chief Counsel

Dear Mr. Lucas:

We have received your letter of January 22, 1940, which reads as follows:

"This letter relates to The Bankers Security Mutual Life Insurance Company. I understand that four or five years ago they folded up and Mr. Winger personally paid out all claims. I think this has had the attention of Mr. Allebach in the past and while he was with the Department.

The immediate questions before us are whether a company's charter should be forfeited for non-user or whether we shall allow them to resume business under the old charter. If they are allowed to resume business under the old charter, then of course the question arises as to what they must do under Sections 5760 and 5761 to do this. Akin to that question is also the question whether or not the Article 4 company can operate as a mutual, or whether they must have at least $25,000 in stock.

The Superintendent desires to submit

these questions to you, not only as his legal adviser under the statutes, but obviously for the question which your Department must ultimately settle, and that is whether the non-user of corporate powers for the stated length of time should warrant ouster proceedings by your office. It seems to me that it would be useless for us to permit them to resume business if, in turn, their charter should be forfeited. I attach hereto copy of a letter addressed to the Superintendent by Warren A. Drummond, dated January 10, 1940, which requests the information as I understand it."

You enclosed copy of a letter from Warren A. Drummond, an attorney in Kansas City, which is as follows:

"We desire to be informed by the Missouri Insurance Department as to what requirements must be met in order to obtain a certificate of authority to commence doing a mutual stipulated premium plan of insurance business in the State of Missouri under the following circumstances.

The Bankers Security Mutual Life Insurance Company was granted a charter as an assessment insurance company under Article 3 of Chapter 50, Revised Statutes of Missouri for 1919 by the Circuit Court of Jackson County, Missouri at Kansas City, the regularity of such proceedings being certified to by Mr. Joseph B. Thompson, then Superintendent of Insurance who, on the 8th day of November, 1929, certified that the company had complied with the insurance laws of the State of Missouri and granted it a certificate of authority to commence business.

This company actually conducted an insurance business under the assessment plan until the year 1931. On the 12th day of May, 1931, the directors of this company voted to change the type of insurance business then being conducted by the company from the assessment plan to the mutual stipulated premium plan under Article 4, Chapter 37 of the insurance code. Thereupon, amended Articles of Association were entered into and on the 15th day of May, 1931, Joseph B. Thompson, then Superintendent of Insurance for Missouri, certified that he had examined the amended articles and found them to be in compliance with the provisions of Article 4, Chapter 50 of the Revised Statutes of Missouri for 1919. Upon the same date, Mr. G. C. Weatherby, special counsel for the Attorney General of the State of Missouri, in a letter to Mr. James K. Coolidge, then counsel of the Missouri Insurance Department, stated that the papers submitted by Mr. Coolidge to the Attorney General concerning the reincorporation of the above entitled company as a company to be operated under the stipulated premium plan had been referred to him for his attention, and, in his opinion, the proceedings of the directors were regular and in compliance with the law of the State of Missouri governing the same. This report was approved by Mr. Stratton Shartel, then Attorney General for the State of Missouri.

On the same date, May 15th, 1931, Mr. Charles U. Becker, then Secretary of State for Missouri, issued a certificate of incorporation for this company, stating that all provisions of law for the formation

of an insurance company on the stipulated premium plan had been complied with.

Thereafter, the above named company, under the charter, certificates, and authorities hereinbefore mentioned, was operated as a mutual stipulated premium plan company. Such operation continued until some four or five years ago when the company paid all of its indebtedness and ceased to do business but did not surrender its charter, nor receive back its deposits with the Missouri Insurance Department, nor has the charter ever been forfeited but is still outstanding.

We represent a group of Kansas City business men who are desirous of qualifying to do a stipulated premium insurance business as a mutual company under this charter. It is the belief and contention of ourselves and our clients that the deposit required by law of such a company is $5,000 as provided and described by Section 5761, R. S. Mo. 1929. Our clients are ready to meet this requirement. In the event you do not agree with our conclusions with respect to the amount of the deposit please advise us as to your views of same."

The first question you ask is whether an insurance company charter stands as forfeited for the fact only that it has not been used for some period of time.

On January 24, 1940, this office addressed an opinion to the Honorable J. W. McCammon, Supervisor of the Building and Loan Department of the State of Missouri, in which this same question was discussed. We are enclosing a copy of this opinion. We there held that the charter of a building and loan association does not automatically die when the association quits business; that the charter is, under such

circumstances, merely held in abeyance awaiting for the same to be destroyed by appropriate court action, or such voluntary action as is required by the corporation laws; that the Building and Loan Supervisor does not have the authority to void the charter. The same reasoning would apply to insurance companies and to the powers of the superintendent of insurance and we are, therefore, of the opinion that the charter in question did not cease to exist merely because it has not been used for the past four or five years.

You state that the Bankers Securities Mutual Life Insurance Company appears to have been chartered as a Mutual Stipulated Premium Company under the terms of Article IV, Chapter 37, R. S. Mo. 1929, and you ask whether the company can operate as a mutual, or whether it must have at least Twenty-five Thousand Dollars ($25,000) in capital stock. A mutual company, of course, has no capital stock.

Section 5760, R. S. Mo. 1929, contained in said Article IV, provides what the articles of agreement of a stipulated premium company shall contain. This section reads in part as follows:

> "The persons mentioned in section 5759 of this article shall be designated as corporators, and such persons shall associate themselves by articles of agreement, in writing, duly signed and acknowledged, setting forth: First, 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; second, the name of the city, town or county in which the principal office is located; third, the amount of the capital stock of the corporation, provided the same be a stock company, which shall not be less than $25,000, the number of shares into which it is divided, and the par value thereof, that the same has been bona fide sub-

> scribed, and actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors; the name and place of the several shareholders and the number of shares subscribed by each; fourth, the number of the board of directors or managers, which shall be not less than seven, their powers, and duties, and the names agreed upon for the first year; fifth, the number of years the corporation is to continue; sixth, a statement that the company is formed for the purpose of carrying on the business of insurance under the provisions of this article."

It will be observed by the third provision above the amount of the capital stock of the corporation, "provided the same be a stock company", shall not be less than Twenty-five Thousand Dollars ($25,000), all of which shall be paid up in cash. This quoted part is the only suggestion in the entire article that anything but a stock stipulated premium company was ever contemplated by the legislature. Nowhere in the article is the expression "mutual company" used. Nowhere in the article has the legislature intimated what type of a financial structure a mutual stipulated premium company should have as a prerequisite to its engaging in business. The term "provided the same be a stock company" could as well include a reciprocal exchange or a fraternal. Therefore, since the legislature has not provided the machinery for the operation of a mutual stipulated premium company or for the operation of any other plan of insurance on the stipulated premium plan other than on the stock plan, it would seem that no other plan was intended.

The legislative intent in this respect is clearly shown by a review of the statutory requirements of each of the different types of companies provided for in the insurance code of this state. Article II, page 37, R. S. Mo. 1929, provides for the formation and operation of joint stock old line life insurance companies and mutual old line life insurance companies. As to joint stock companies, Section

5694 provides what the charter shall contain and Sections 5696 and 5715 states that the amount of paid up capital stock shall not be less than One Hundred Thousand Dollars ($100,000). As to the mutual companies, Section 5698 provides what that type of charter shall include and Section 5715, as amended Laws of Missouri 1939, page 454, states that, "No mutual company formed under the provisions of this article or of the laws of this state, shall commence or continue to do any business mentioned in Section 5690 until agreement, in writing, with such companies shall have been entered into by not less than one hundred persons for assurance upon their own lives, or the lives of other persons for their benefit, nor until it shall have received premiums on the same in cash, or partly in cash, and partly in bona fide obligations, to an aggregate amount of not less than one hundred thousand dollars."

Article III, of Chapter 37, R. S. Mo. 1929, provides for life insurance on the assessment plan. This is a form of mutual company and has no capital stock. Section 5746 of said article, as amended in Laws of Missouri 1933, page 272, states who may organize such a company, how it shall be organized, together with original license requirements. This section then provides that:

> " * * no certificate of incorporation issued as aforesaid until the Superintendent of the Insurance Department shall certify that * * * * * * * the society, association or company seeking to be incorporated has secured applications for not less than one hundred thousand dollars insurance by not less than one hundred persons, and that fifteen thousand dollars in securities, approved by the Superintendent of Insurance has been deposited with the Department of Insurance, which fund shall be held in trust as a beneficiary fund by the said Superintendent of Insurance."

Article VI of the Insurance Laws provides for the formation

and operation of stock fire insurance companies, mutual fire insurance companies, and stock casualty insurance companies. The charter requirements of joint stock companies, both fire and casualty, are set out in detail in Section 5798. Section 5807 requires a capital stock fund of at least Two Hundred Thousand Dollars ($200,000) for these companies, except for companies doing exclusively a plate glass or accident insurance business. These latter companies are required to have only One Hundred Thousand Dollars ($100,000) of capital stock. Section 5795 requires each company to deposit Two Hundred Thousand Dollars ($200,000) with the Superintendent of Insurance before starting business. As to mutual fire insurance companies, the charter requirements are set forth in detail in Section 5803, and Section 5808 states that before such a company can begin business, it must have a guaranty fund of Fifty Thousand Dollars ($50,000), which shall be deposited with the Superintendent of Insurance, or in lieu thereof two hundred applications for membership and insurance with premiums not less than One Hundred Thousand Dollars ($100,000) of which thirty per cent at least shall be paid in cash.

Article VII provides for the formation and operation of mutual casualty insurance companies only. Section 5840 states definitely what the articles of incorporation shall specify, and Section 5845 provides that no such company shall be licensed until at least two hundred separate risks are insured, and at least Twenty-five Thousand Dollars ($25,000) shall have been collected.

Article XI, dealing with reciprocal exchanges, and Article XIII, with fraternal beneficiary associations are as detailed as the articles described above. Each of the articles in the insurance code providing for the organization and operation of insurance companies give in detail the steps which must be taken to complete their organization, together with exact minimum financial and insurance requirements. The duties of the superintendent of insurance are outlined, and the attorney general is given the duty of certifying all articles of incorporation as to form, and whether or not the articles comply with the law under which the same are proposed to be organized. The statutes descend into the minutest details

in prescribing the duties of the superintendent of insurance and the attorney general in the formation of insurance companies. This is true in every case, except in connection with the proposition you submit, that is, a mutual stipulated premium company. It appears, therefore, that the legislature never intended that such a company should be incorporated. If it had, it would surely have prescribed the method of organization, together with the minimum original license and financial requirements, in order to chart the course and guide the superintendent of insurance and the attorney general in passing upon the articles of incorporatinn and assets, the same as it has done in every other type of company.

Section 5760 of the stipulated premium laws reads in part as follows:

> "Said articles of agreement shall be submitted to the superintendent of insurance and attorney-general, and if they are found by these officers to comply with the provisions of this article, they shall approve the same."

Since no requirements are set up in Article IV for a stipulated premium company on the mutual plan, it would be impossible for either the superintendent of insurance or the attorney general to find that the articles of agreement, "comply with the provisions of this article."

It is suggested that the deposit of Five Thousand Dollars $5,000) required to be made with the superintendent of insurance by stipulated premium companies by Section 5761 was intended as the minimum monetary requirement for mutuals. This section provided that <u>all</u> stipulated premium companies shall make this deposit and, of course, this applies to stock companies. This section likewise makes no mention of mutual companies. It is difficult, therefore,

to reach the conclusion that the legislature intended this deposit to be a guaranty fund for mutuals to be used in place of the capital stock fund required of stock companies.

It will also be observed that the legislature, in enacting Article III pertaining to assessment life insurance companies, made provision for any needs which might exist for a small mutual life insurance company. If it can be said that Article IV also provides for the formation of a small mutual life insurance company, then the legislature has provided an almost exact duplicate. Without definite language and detailed requirements for such a company in Article IV, we do not believe the legislature intended any such result.

CONCLUSION

It follows, therefore, that the charter of an insurance company does not automatically die because of non-user. Such a charter can only be destroyed by appropriate court action or the form of voluntary action required by law.

Further, that since Article IV, Chap. 37, R. S. Mo. 1929, which deals with companies doing business on the stipulated premium plan, makes no provision for the corporate set up or the financial requirements of a mutual company, neither the superintendent of insurance nor the attorney general can certify that such a company has complied with the provisions of the article, or that its requirements have been met in order to qualify for a license to do business.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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