

INSURANCE:

Mutual insurance companies in existence prior to the year 1899 can become stipulated premium companies without capital stock.

May 2, 1940

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

Attention: Mr. Charles J. Harvey  
Assistant Counsel

Dear Sir:

We have received your letter of April 23rd regarding the Industrial Benefit Association which reads as follows:

"The above named Association was incorporated in July 1893, by pro forma decree in the Circuit Court of the City of St. Louis, as a fraternal benefit society under the laws existing at that time, and it has been continuously operating up to the present, issuing benefit certificates to its members and collecting small weekly dues or premiums. During these years it has been licensed by this Department as a fraternal beneficiary society, although it is not such a fraternal benefit society as we find today, in that it has no ritual or lodge work, and its officers state that it would be impractical for them to operate as a true fraternal for the reason that its members are both white and colored.

"On October 5, 1939, the above Association filed amended Articles of Association with the Secretary of State in accordance with Section 5775, Article 4, Chapter 37, R. S. Mo. 1929, for the purpose of reincorporating under the above section as a mutual stipulated premium company, and the Secretary

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of State issued his certificate certifying that said amended Articles of Association had been filed in his office. Thereupon, said Association filed with this Department certified copy of such amended articles, together with application for license to do business in this State as a mutual stipulated premium company.

"An examination of the books and records of said Association discloses that it has assets over and above all liabilities in excess of \$25,000.00.

"Will you kindly advise this Department, in view of the above, whether or not the above Association has complied with the laws of the State of Missouri, particularly Article 4, Chapter 37, and whether or not license to transact business should be issued or denied."

Article IV, chapter 37, R. S. Missouri 1929, contains the laws dealing with companies doing business on the stipulated premium plan. On February 3, 1940, we addressed an opinion to you in which we held that a company could not be incorporated as a mutual stipulated premium company because the legislature had never made any provisions for the formation of such a corporation. The company concerned in that opinion was the Bankers' Security Mutual Life Insurance Company. The opinion request there showed that the particular company was originally incorporated in the year 1929 as an assessment association under Article III, chapter 37, R. S. Missouri 1929, and re-incorporated in the year 1931 as a mutual stipulated premium company. We held that said Article IV did not provide for the original incorporation of a mutual company and in effect the purported company therein involved did not exist.

You have now presented a different question and that is whether a mutual company, in existence at the time Article IV was first enacted, can accept the pro-

visions of said Article without becoming a stock company. You state that the Industrial Benefit Association was first incorporated in July 1893. The stipulated premium law was first enacted by the legislature in the year 1899, and is contained in Laws of Missouri 1899, pages 260-267, inclusive. This act appears in the Revised Statutes of 1899 as a new article. Section 7930, R. S. Missouri 1899, then a new section, and is in words and figures the same as Section 5775, R. S. Missouri 1929, which reads as follows:

"Any domestic life or accident corporation, company or association existing or doing business in this state at the time this article takes effect, may, by the vote of a majority of its board of directors or trustees, accept the provisions of this article and amend its articles of incorporation to conform to the same, so as to cover and enjoy any and all the provisions and privileges of this article the same as if it had been originally incorporated thereunder, and it shall file such amended articles of incorporation in the office of the secretary of state, a certified copy of which shall be filed with the insurance department, and shall thereafter perpetually enjoy the same and be deemed to have been incorporated under this article. Reincorporation, however, shall in no way annul, modify or change any of the existing contracts and liabilities of such corporation, and any and all such contracts and liabilities shall continue in force and effect the same as though such corporation had not reincorporated or qualified under this article, neither shall such reincorporation in any way prejudice, impede or impair any pending action or proceeding or any rights

previously acquired."

Since it appears that the Industrial Benefit Association was in existence and was doing business in this state at the time Article IV took effect, the company undoubtedly has the right to re-incorporate as a stipulated premium company under its terms. Since it also appears that the company was incorporated in 1893 on the mutual plan without capital stock, we also believe that it may be re-incorporated under Section 5775 and do business on the stipulated premium plan without changing its type and becoming a capital stock company.

There is nothing contained in said Article IV which indicates that companies in existence prior to the passage of the article must become capital stock companies in "accepting the provisions" of the article. Section 5775 merely states that any existing company, by a vote of a majority of its board of directors or trustees, may "accept the provisions of this article and amend its articles of incorporation to conform to the same, so as to cover and enjoy any and all the provisions and privileges of this article the same as if it had been originally incorporated thereunder, \* \* \*". In this connection Section 5760, R. S. Missouri 1929, and also contained in Article IV, provides what the articles of agreement of a stipulated premium company shall contain. It provides that part three of the articles of incorporation shall contain "the amount of the capital stock of the corporation, provided the same be a stock company, which shall not be less than \$25,000, etc." (underlining ours)

While we pointed out in our opinion of February 3, 1940, that the above underlined part did not provide for the formation of a new stipulated premium company on the mutual plan because Article IV does not contain the original requirements for the formation of such a new company, we believe said provision is applicable and was intended to apply to companies in existence prior to the year 1899 and which might wish to avail themselves of the provisions of Section 5775. If this is not true, then the term "provided the same be a stock company" is meaningless and of no effect under any circumstances. In State ex rel. Orscheln

Bros. Truck Lines, Inc., v. Public Service Commission of Missouri, 98 S. W. (2d) 126, the Kansas City Court of Appeals stated the following general rule of law, l. c. 126:

"\* \* \* It is a well recognized rule of statutory construction that effect must be given, if possible, to the whole of the statute and every part thereof so that every section, word, clause or sentence be made operative." (citing many cases)

Therefore, to give effect to every word, clause and sentence it must be said that it was the intent of the legislature that mutual companies in existence prior to the enactment of Article IV need not become a stock company in accepting the provisions of the article. If the company involved happened to be a stock company, then, of course, it would necessarily need a capital stock of at least Twenty-five Thousand Dollars (\$25,000.00) before it could be licensed under the direct wording of the statute.

Section 5761 of Article IV provides that no stipulated premium company shall do business until at least two hundred persons have contracted for, or there is in force, at least Two Hundred Fifty Thousand Dollars (\$250,000.00) of insurance. This section further provides that "every corporation incorporating or re-incorporating under the provisions of this article shall deposit with the superintendent of insurance such securities as are required by law to be deposited by insurance companies the sum of five thousand dollars before it shall commence business. \* \* " These provisions of Section 5761 should, of course, be met before a license is issued as the same undoubtedly applied to all companies doing business on the stipulated business plan whether re-incorporated under Article IV or not.

In your letter you state that the company has complied with the other provisions of Section 5775 in that amended articles of the association have been filed with the Secretary of State and that certified

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copies of the same have been filed with the Insurance Department. From what you say we presume that these articles follow the terms of Article IV.

Respectfully submitted

J. F. ALLEBACH  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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