

INSURANCE DEPARTMENT:

In order to increase capital stock of a life insurance company names of the subscribers of same, the amount paid, or the securities given by such subscribers guaranteeing payment must be shown in the proceedings to increase the capital stock.

10-5

October 4, 1934

Honorable R. E. O'Malley  
Superintendent of Insurance Department  
Jefferson City  
Missouri



Dear Sir:

We acknowledge receipt of letter of your Department dated September 24, 1934 requesting an opinion as to the increase of the capital stock of the State National Life Insurance Company, with inclosures attached. The letter is as follows:

"We are inclosing herewith a copy of the proceedings of the State National Life Insurance Company purporting to increase the capital stock of said company, as same was filed with us on September 21, 1934. We would like your opinion as to whether the papers included herein are legally sufficient to warrant the Superintendent in authorizing the increase.

In connection with the above, I call your attention particularly to the fact that there is nothing in said papers showing the names of subscribers, if any, nor the amount paid, if any, nor the security given by said subscribers guaranteeing payment, if any.

It is my personal opinion that Article II and, in fact, the whole of Chapter 37, contemplates that a life insurance company shall have no stock which is not

subscribed for and paid up or secured. You will note that in Section 5694, R.S. of Mo. 1929, in the formation of a stock life insurance company, the organizers or incorporators must set forth in their declaration of intention the amount of the proposed capital stock, the number of shares into which it shall be divided, and the manner in which it shall be paid up or secured.

Section 5695, R. S. of Mo. 1929, provides that after the filing of the declaration of intention and certain other formalities, the declaration shall be submitted to you for your approval as to its legality and thereafter the Superintendent, if the legality of the corporate papers is sustained by you, shall file same in the office of the Secretary of State and charter be granted, but in this section it is expressly provided that the company shall not issue policies or transact any business of any kind or nature whatsoever until it is organized and has opened books for subscription to the capital stock and kept the same open until the whole amount specified in the charter is subscribed.

There are requirements other than those of Section 5695 which must be complied with before a license to do business is issued by the Superintendent, but for the present I refer particularly to the line underscored above. It would seem from that requirement that it was the intention of the Legislature to provide that all the stock of a life insurance company must be subscribed before the company is to do business and by this requirement a life insurance company would be kept out of the stock selling business.

This conclusion is further substantiated by the provisions of Section 5715, R. S. of Mo. 1929, where the requirements for the capital stock of a company are listed. That section provides that no stock company shall commence or do business unless, among other things, the full amount of capital stock named in its charter or articles of association shall have been in good faith subscribed, nor until such company shall have at least \$100,000 of its capital paid in and invested in certain securities therein described, nor until it holds, for the balance unpaid on all its capital stock subscribed, the note of prospective subscribers with good and sufficient security therefor other than the stock of said company.

Under Section 5915, R. S. of Mo. 1929, pertaining to the increase of stock of a stock life insurance company, under which section the State National Life Insurance Company desires to increase its stock, we find no such requirements except Section 5916, which section provides that any company increasing its capital stock must comply with the other provisions of this Chapter, and its stock shall be subscribed and secured as provided in this Chapter for companies incorporating thereunder.

The question then presented is whether or not, at the time of authorizing the increase, the company should not have on file with the Insurance Department, together with the other papers inclosed herewith, the names of subscribers to the stock if and when the increase is authorized, the amounts that such subscribers have subscribed, and the amount paid in therefor, or the security given other than the stock of the company.

October 4, 1934

As before stated, it is my opinion that the laws relating to the organization of a stock insurance company are so clear, to the effect that a stock company shall not have upon its books unsubscribed stock, that in order to comply with the law, before an increase should be authorized, the company must have had the stock tentatively subscribed and the subscriptions secured in accordance with the laws applicable to its incorporation. This is necessary because the company is already doing business, since it is a going concern, and if my opinion were not the law, then we would have an insurance company writing business with unsubscribed stock on its books."

The reasoning employed; the analysis of the applicable statutes and the conclusions of law reached by learned counsel of your department are so clearly right and satisfactory that we adopt the same as the opinion of this department.

#### CONCLUSION.

Accordingly, we are of the opinion that the copy of the record of the proceedings submitted, in reference to the purported increase of the capital stock of the State National Life Insurance Company, are insufficient to warrant the Superintendent of Insurance in authorizing the increase of its capital stock for the reason that the names of the subscribers to the desired increased stock, nor the amount of such increase paid, nor the security given by subscribers

Honorable R. E. O'Malley

-5-

October 4, 1934

of such stock guaranteeing payment for same are not shown.

We return you your inclosures herewith.

Yours very truly,

GILBERT LAMB  
Assistant Attorney General,

APPROVED:

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ROY McKITTRICK  
Attorney General.

GL:LC

Inclosures