

INSURANCE: 3 questions relating to Burial Society incorporating as a stipulated premium company.

March 22, 1938

3-24



Hon. Charles M. Hansen
Actuary
Insurance Department
Jefferson City, Missouri

Dear Mr. Hansen:

This Department wishes to acknowledge your letter of March 14, 1938, wherein you state as follows:

"This Department would like to have your opinion on several questions arising out of an application by a Burial Society operating under Article X, Chapter 32, Revised Statutes of Missouri, 1929, to re-incorporate under Article IV, Chapter 37, Revised Statutes of Missouri, 1929, as a stock stipulated premium life insurance company. The questions are as follows:

(1) Is the capital stock and all surplus of the new company always subject to any liability arising out of the Burial Society business assumed by the new company?

(2) Do all of the provisions of the Burial certificates, as well as the By-Laws governing policy benefits remain in effect after the date of reincorporation as a stipulated premium insurance company?

(3) Are these Burial certificate holders to be charged with only their actual expenses after re-incorporation as an Article IV company of the Insurance Code?"

I.

Fletcher's Cyclopedia of the law of Private Corporations, Vol. 15, Section 7328, page 445, in discussing the question whether a reorganized company assumes the debts and obligations of the old company *declares that*

"upon reorganization, the reorganized company, irrespective of whether it is a voluntary or an involuntary reorganization, may become liable for the debts and obligations of the old company where it expressly assumes them, or where the facts and circumstances give rise to an implication of assumption."

32 Corpus Juris, Section 67, page 1021, in discussing reorganization and reincorporation of insurance companies states that:

"Reincorporation does not annul or modify existing contracts of the company and the new company is liable thereon."

In the case of Maxwell vs. Eureka Mutual Ben. Corp., 262 Ill. App. 342, the Court in holding that upon ~~reincorporation~~ ~~the new organization became~~ ~~sets~~ liable upon all outstanding certificates of insurance, ~~sets~~ out the following facts:

"The Eureka Mutual Benefit Corporation issued a certificate of insurance to James Maxwell on September 11, 1925, in which appellee, a son of the insured, was named as beneficiary. The insurer was incorporated on May 25, 1925, under section 29 of the Corporation Act of 1872, Cahill's St. 1925, ch. 32, Sec. 159. In 1927 that statute was so amended that the insurer could only retain its corporate existence for six months after July 1, 1927, for the sole purpose of winding up its business or reincorporating under some Act, the enforcement of which would come

within the jurisdiction of the department of trade and commerce. In 1927, the legislature passed another Act for the incorporation of Mutual Benefit Associations, Cahill's St. ch. 73, Sec. 435 (1) et seq., under which the insurer was authorized to reincorporate. It did reincorporate, under the same name, on August 29, 1927.

* * * * *

The reincorporated association became liable upon all outstanding certificates of insurance."

From the foregoing we are of the opinion that when a Burial Society operating under Article X, Chapter 32, R. S. Missouri 1929, reincorporates under Article IV, Chapter 37, R.S. Missouri 1929, as a stock stipulated premium life insurance company the capital stock and surplus of the new company becomes subject to any liability arising out of the Burial Society business.

II.

Your second question is answered by Section 5775, Article IV, Chapter 37, R. S. Missouri 1929, 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."

In the case of Richards vs. Security Mutual Life Insurance Company, 259 F. 727, the New York statutes authorized the reincorporation thereunder of domestic life insurance companies doing business on the stipulated premium plan, but provided that each reincorporation

"shall in no way annul, modify or change any existing contract, contracts or liabilities of such existing corporation."

The Court in holding that such a provision was not unconstitutional as impairing the obligation of contracts said:

"I am not able to see how the reincorporation of this company in any way injured the plaintiff here or any other person similarly situated, inasmuch as by way of impairing the obligations of the contracts of insurance the section quoted expressly provides that the reincorporation and qualifying under the statute 'shall in no way annul, modify or change any existing contract, contracts or liabilities of such existing corporation, association or society and any and all such contracts and liabilities shall continue in full force and effect the same as though said corporation, association or society had not reincorporated or qualified under this article.'

It is plain that the plaintiff's contract is not impaired or changed. The new corporation is bound by it the same as was the old one."

From the foregoing we are of the opinion that the provisions of the burial certificates, as well as the by-laws governing policy benefits remain in effect after the date of reincorporation as a stipulated premium insurance company.

III.

Section 5775 supra, states that reincorporation shall in no way annul, modify or change any of the existing liability of such corporation. To charge the Burial Society with expenses of the new company would be to change the liabilities of the Society. We are therefore of the opinion that the Burial Society should be charged only with their own and actual expenses after reincorporation as a stipulated premium company.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

MW:MM