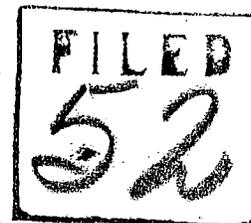


INSURANCE: Domestic stock fire insurance company subject to Sections 379.010 to 379.200, RSMo 1949, as amended, may invest in the entire stock issue of a foreign fire insurance company organized for the purpose of doing any of the kinds of insurance mentioned in one of the subdivisions of Section 379.010, RSMo 1949, but qualifications and limitations found in Section 379.080, RSMo 1949, pertaining to capital stock structure, and stated percentages of assets to be invested, are applicable.

July 8, 1959



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

Dear Mr. Leggett:

This opinion is in reply to your inquiry reading as follows:

"A licensed domestic stock fire insurance company has requested our approval of its proposed plan to organize a wholly owned subsidiary in the state of Kansas. The subsidiary will also be a stock fire insurance company with a capitalization of \$450,000.

The domestic company which proposes this plan is a rather large insurance company. As of December 31, 1957 it had admitted assets of approximately \$10,000,000, and reserves of approximately \$2,500,000.

I hereby request your opinion as to whether the Missouri company may lawfully invest its funds in the plan described above."

The basic law of incorporation of a Missouri stock fire insurance company is found at Sections 379.010 to 379.200, RSMo 1949, as amended. In State ex rel. Missouri State Life Insurance Company v. Gehner, 320 Mo. 691, 8 S.W.(2d) 1068, the Supreme Court of Missouri alluded to the power of insurance companies to invest their assets in stocks of other corporations by using the following language found at 320 Mo. 691, l.c. 700:

"Assets in excess of reserves may, it seems, be invested in stocks of other corporations. [Laws 1927, p. 285; Laws 1925, p. 270; Secs. 6126, 6159, 6217, 6259 and 6331, R.S.1919.]"

Honorable C. Lawrence Leggett

Section 6217, RSMo 1919, referred to in the preceding quotation may now be found at Section 379.080, RSMo 1949, disclosing how the capital and other assets of a stock fire insurance may be invested. The statute just referred to has been amended since the decision in State ex rel. Insurance Company v. Gehner, supra, but each amendment has liberalized to a greater extent the power of investment. We construe the opinion request as disclosing that the stock fire insurance company will subscribe to the entire capital stock issue of the company to be formed. Such subscription to capital stock will necessarily involve an investment of the present stock fire insurance company's assets over and above its capital and surplus. This power to invest is governed solely by the provisions of Section 379.080, RSMo 1949, reading as follows:

"No company formed on the joint stock plan for the purpose of doing either of the kinds or classes of business mentioned in section 379.010, shall hereafter commence or do business with a capital of less than two hundred thousand dollars, except plate glass insurance companies and accident insurance companies, which may be permitted to do business with a capital of one hundred thousand dollars; and before any such company shall proceed to do business, the capital of such company shall be wholly paid in, and one hundred thousand dollars thereof, if a plate glass insurance or accident insurance company, and two hundred thousand dollars thereof, if any other company mentioned in said section 379.010, be held in cash or invested in treasury notes or bonds of the United States, or in bonds of the state of Missouri, or in bonds issued by any school district of the state of Missouri, or in funded bonds of any county or municipal township of this state, or in bonds and mortgages or deeds of trust on improved unencumbered real estate in this or any other state worth at least double the amount loaned thereon, the valuation of the real estate so mortgaged to be determined by the superintendent, after a personal examination, or after an examination made by some competent disinterested person specially appointed by him for that purpose; such bonds shall not be received at a rate above their actual market value; and the remainder of the capital of said companies and their other

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assets may be invested either in the property or securities in this section above mentioned, or in loans safely secured by collateral worth, at its cash market value, not less than twenty per cent in excess of the amount loaned thereon, or in stocks, bonds or evidences of indebtedness issued by corporations organized under the laws of this state, or of the United States, or of any other state, or, so far as may be necessary to make deposits with the authorities of foreign countries to do business therein, the bonds of such foreign countries; provided, that no such insurance company may buy stock in any company to an amount which will give the company so buying the virtual control of any other corporation, except that any corporation organized under or for the purpose of doing any of the kinds of business mentioned in one of the subdivisions of section 379.010 may buy and hold any amount of stock in other corporations organized under or for the purpose of doing any of the kinds of business mentioned in any one of the subdivisions of said section 379.010, but it may not purchase a majority of the shares in any other insurance corporation unless it has a capital of two hundred thousand dollars in addition to the capital required by this section for each such company, the controlling interest in which is purchased, and no such company shall invest more than thirty-five per cent of the surplus to policyholders of such acquiring company, or fifty per cent of its surplus over and above its liabilities and capital, whichever is greater, in the stocks or bonds of any other such corporation." (Underscoring supplied.)

We now briefly analyze Section 379.080, RSMo 1949, supra. The underscoring of language in this statute of unusual length will emphasize the points to be made. The statute commences by requiring that a stock fire insurance company, such as we are treating in this opinion, must have a fully paid capital of two hundred thousand dollars and descends into detail when outlining how such capital stock fund is to be invested. The statute then treats as its next subject "the remainder of the capital of said companies and their other assets." Underscored language discloses that such assets may be invested in stocks issued by corporations organized under the laws of "any other state," and this power is then limited

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by the proviso disclosing that the investing company may not invest in the stock of any company to the extent that virtual control of the acquired company will be obtained. However, this proviso contains an exception which permits any company organized "for the purpose of doing any of the kinds of business mentioned in one of the subdivisions of section 379.010" to buy and hold any amount of stock in other corporations organized "for the purpose of doing any of the kinds of business mentioned in any one of the subdivisions of said section 379.010." This last mentioned power to buy any amount of stock is further circumscribed by language in the statute providing that if as much as a "majority" of the stock is to be purchased the purchasing company must have capital stock of two hundred thousand dollars over and above its initial capital stock of two hundred thousand dollars, or a total capital stock of four hundred thousand dollars. In addition to this capital stock requirement, the purchasing company is further limited in its power to acquire a "majority" of stock in another approved stock fire insurance company by the limitation set forth in the statute directed to a percentage of surplus to policyholders or a percentage of "surplus over and above" the acquiring company's liabilities and capital, whichever is greater. Thus we find, that after giving authority to a stock fire insurance company to purchase "any amount" of the stock of a company formed to do business under any one of the subdivisions of Section 379.010, RSMo 1949, Section 379.080, RSMo 1949, qualifies that right in instances only where a "majority" of the stock is to be purchased. Of course, such limitations as are found in the latter part of Section 379.080, RSMo 1949, will be enforced against a stock fire insurance company acquiring the entire stock issue of an insurance company formed in a foreign state for the purpose of doing any of the kinds of business mentioned in any one of the subdivisions of Section 379.010, RSMo 1949.

CONCLUSION

It is the opinion of this office that a domestic stock fire insurance company subject to the provisions of Sections 379.010 to 379.200, RSMo 1949, as amended, is authorized to invest in the entire stock issue of a fire insurance company to be organized in a foreign state and formed for the purpose of doing any of the kinds of business mentioned in one of the subdivisions of Section 379.010, RSMo 1949, but such domestic purchasing company must meet all qualifications and limitations set forth in Section 379.080, RSMo 1949, pertaining to capital stock structure and stated percentages of assets which may be invested.

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

Yours very truly,

John M. Dalton
Attorney General

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