

INSURANCE:
LIFE INSURANCE AND
LIFE INSURANCE COMPANIES
SUPERINTENDENT OF INSURANCE

A Missouri domiciled life insurance company organized under the provisions of Sections 376.010 through 376.675, RSMo, is not permitted to use the common stock of a wholly-owned subsidiary which has been organized or acquired pursuant to the provisions of Section 375.355, RSMo Supp. 1967, as a special deposit required under Section 376.170, RSMo 1959.

March 20, 1969

OPINION NO. 120-69

Honorable Robert D. Scharz
Superintendent
Division of Insurance
Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Scharz:

This official opinion is issued in response to your request for a ruling concerning whether or not a Missouri domiciled life insurance company, organized under the provisions of Sections 376.010 through 376.675, may deposit under Section 376.010, shares of the common stock of a wholly-owned subsidiary life insurance company acquired under the provisions of Section 375.355.

Under Section 376.170, RSMo 1959, all life insurance companies organized under the provisions of Section 376.010 to 376.670 are required to maintain special deposits with the superintendent of insurance. Section 376.170 states in full as follows:

"Special deposits for registered policies and annuity bonds. -- All life insurance companies organized under the provisions of sections 376.010 to 376.670, shall deposit with the superintendent of the insurance division, in addition to other amounts required by law to be deposited by life insurance companies before such companies are permitted to engage in the business of issuing policies of life insurance and annuity bonds, cash or securities of the kind and type in which life insurance companies are required to

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invest their funds under section 376.300, as same now is or as same may be hereafter amended, in an amount sufficient to equal the net value on all policies or annuity bonds hereafter issued by such companies, the amount thereof to be determined by an evaluation made in accord with the provisions of sections 376.010 to 376.670."

Under Section 375.355, RSMo Supp. 1967, any insurance company organized under the laws of this state may, with the approval of the superintendent of the Division of Insurance, organize or acquire and hold not less than the majority of the common stock of another insurance company.

Section 376.305, RSMo 1959 provides that the capital, reserve and surplus of all life insurance companies of whatever kind and character organized and doing business under Sections 376.010 to 376.670 may be invested in the common stock of certain corporations under certain conditions and that such common stock which meets the qualifications as prescribed in that section shall be eligible for deposit as provided under Section 376.170. Section 376.305 provides in full as follows:

"1. In addition to the investments permitted by section 376.300, the capital, reserve and surplus of all life insurance companies of whatever kind and character organized or doing business under sections 376.010 to 376.670, may be invested in the common stock of any solvent corporation, organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, provided the corporation's net worth as shown on its balance sheet at the end of the last fiscal year preceding purchase shall have been at least ten million dollars and cash dividends shall have been earned and paid on its common stock in each of the five fiscal years preceding such acquisition; provided further that all prior obligations or preference stocks of such corporation, if any, are eligible for investment under any of the provisions of section 376.300, and that such common stocks are registered on a national securities exchange

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or quoted in established over-the-counter markets. Common stocks meeting the preceding qualifications shall be eligible for deposit, as provided under section 376.170.

"2. No such life insurance company shall invest in excess of five per cent of its admitted assets or fifty per cent of its surplus, whichever is the lesser, as shown by its last annual statement preceding the date of acquisition, as filed with the superintendent of the insurance division of the state of Missouri, in the total amount of such common stocks, nor shall such life insurance company own securities described in subdivision (7) of subsection 1 of section 376.300, and subsection 1 of this section, which, in the aggregate, represent more than five per cent of the total of all outstanding shares of stock of the issuing corporation, nor shall any such life insurance company own common stock described in subsection 1 issued by any one corporation which represents more than one-half of one per cent of the admitted assets of such life insurance company."

We must remember, of course, that the question concerns the stock of a wholly-owned subsidiary. An examination of the requirements of Section 376.305 makes it clear that the wholly-owned subsidiary could not qualify under that section.

As we have stated, Section 375.355 permits an insurance company, with the approval of the superintendent, to either organize a subsidiary insurance company or acquire the same by purchase or otherwise and hold not less than the majority of the common stock of such subsidiary. There is no authority in that section to permit such stock to be eligible for deposit; although by comparison, Sections 376.301, RSMo Supp. 1967, 376.303, RSMo Supp. 1967 and 376.305, RSMo 1959, specifically state that certain investments shall be eligible for deposit as provided under Section 376.170, RSMo 1959. By contrast, Section 376.307, RSMo Supp. 1967, which authorizes certain investments which do not otherwise qualify under the provisions of Chapter 375 or 376, RSMo expressly provides that such investments are not eligible for deposit with the Division of Insurance.

We conclude therefore that the legislature has specifically authorized certain types of investments to be held as legal deposits within the requirements of Section 376.170 and that there

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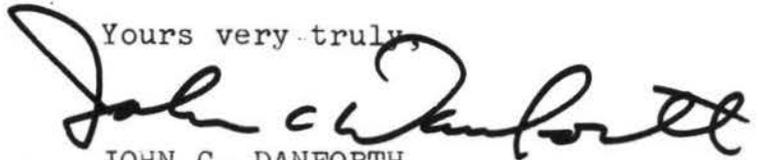
is no authorization for the common stock of a wholly-owned subsidiary organized or acquired under Section 375.355 to be used as such deposit.

CONCLUSION

Therefore, it is the opinion of this office that a Missouri domiciled life insurance company organized under the provisions of Sections 376.010 through 376.675, RSMo, is not permitted to use the common stock of a wholly-owned subsidiary which has been organized or acquired pursuant to the provisions of Section 375.355, RSMo Supp. 1967, as a special deposit required under Section 376.170, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General