

Answer by Letter (Park)

December 22, 1969

OPINION LETTER NO. 583

Honorable William Y. McCaskill
Superintendent
Division of Insurance
Jefferson City, Missouri 65101



Re: Life Insurance Company of Missouri

Dear Mr. McCaskill:

This letter is written pursuant to your request for an opinion as to whether the Declaration of Intention, Articles of Incorporation and Publisher's Affidavit submitted by the incorporators of Life Insurance Company of Missouri and forwarded to this office are in accordance with Chapter 376 of the Revised Statutes of Missouri and not inconsistent with the constitution and laws of this state and the United States.

Section 376.070, RSMo 1959, provides that whenever the incorporators of a proposed joint stock life and accident insurance company file a declaration for the purpose of incorporating such company, the superintendent of the insurance division will submit the declaration to the Attorney General for examination, and if it is found by him to be in accordance with the provisions of Sections 376.010 to 376.670 and not inconsistent with the constitution and laws of this state and the United States, he shall so certify and deliver it back to the superintendent.

We have examined the papers delivered to us in the light of pertinent provisions of the constitution and laws of Missouri and the United States, and it has been concluded that the statutory certification required by Section 376.070 cannot be made for the reason that the proposed declaration of intention and articles of incorporation are inconsistent with the constitution and laws of Missouri.

Article IV of the proposed articles of incorporation, in addition to other classes of shares, authorizes the issuance of 60,000 shares of \$1 par value Class A-1 common stock entitled to 1/2 vote per share

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and 70,000 shares of \$1 par value Class A-3 common stock entitled to 1-1/2 vote per share.

It is our view that the constitution and statutes of Missouri prohibit the creation of stock having multiple votes per share or fractional votes per share.

Article XI, Section 6, of the Missouri Constitution provides:

"In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares held by him, multiplied by the number of directors or managers to be elected, * * * and such directors or managers shall not be elected in any other manner; * * * "

Under the proposed articles of Life Insurance Company of Missouri, in elections for directors a person holding 100 shares of Class A-1 common stock would be entitled to only 50 votes multiplied by the number of directors to be elected, and a person holding 100 shares of Class A-3 common stock would be entitled to 150 votes multiplied by the number of directors. The constitutional provisions require that in this situation each of the shareholders would be entitled to 100 votes multiplied by the number of directors to be elected.

Likewise, Section 375.198, RSMo Supp. 1967 states:

"1. Any capital stock insurance company shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes shall consist of shares with a minimum par value of one dollar, with such designations, preferences, qualifications, limitations, restrictions and such special or relative rights including the right of conversion into any other class of shares as shall be stated in the articles of incorporation; provided, that the authorized number of shares of any class or classes without voting rights shall not exceed in the aggregate a ratio of two shares of such class or classes to one share of the voting stock of the company to be outstanding when the corporation commences business." (Emphasis added)

Thus it is clear that the statute equates shares and votes thereby prohibiting an arrangement authorizing more or less than one vote per share.

Although Chapter 351 of the Revised Statutes of Missouri containing the General and Business Corporation Law of Missouri, does not apply generally to insurance companies (see Section 351.690, RSMo

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Supp. 1967), it is apparent that the legislators have drawn freely upon those statutes in adopting corporation laws relating to Missouri insurance companies. The counterpart of Section 375.198 of the insurance code is found in the earlier enactment of Section 351.180 of the General and Business Corporation Law. Section 375.201, relating to amendment of charter, bears close resemblance to the earlier statute contained in Section 351.050 of the general corporation code. It should be observed that subsection 2(1)(j) of Section 375.201 contains the same proviso used in Section 375.198 that the ratio of non-voting shares to voting shares shall not exceed two to one.

Implementing the constitutional provision set forth in Article XI, Section 6, the legislature enacted Section 351.245 relating to voting shares and election of directors. In pertinent part this section provides as follows:

"1. Each outstanding share entitled to vote under the provisions of the articles of incorporation shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

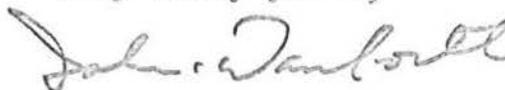
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"3. In all elections for directors of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of voting shares so held by him or her in said corporation, multiplied by the number of directors to be elected at such election, * * * and such directors shall not be elected in any other manner." (Emphasis added)

It is reasonable to conclude that the legislature intended that voting rights of shareholders of joint stock insurance companies should be considered in the same light as the rights of shareholders of general business corporations except where otherwise expressly provided.

As indicated above, for the reasons stated herein the certificate required by Section 376.070, RSMo 1959, cannot be given. The documents forwarded to this office with your letter are returned herewith.

Very truly yours,



JOHN C. DANFORTH
ATTORNEY GENERAL

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