Insurance Company—Reincorporation — From Fraternal Benefit to Old Line Company.

A fraternal benefit insurance company cannot reorganize upon the basis of an old line insurance company, though for final action the question is one for judicial determination.

February 18th, 1920.

Hon. Geo. Porter,
Commissioner of Insurance,
Helena, Montana.

Dear Sir:

I have your letter of the 26th ultimo, referring to the matter of re-incorporation of a fraternal benefit insurance company named the Mystic Toilers. The company desires to re-organize from the basis of a fraternal benefit insurance association to that of an old line life insurance company. On December 20th, 1919, I wrote you to the effect that under our law the insurance company would not be permitted to re-incorporate and continue business as proposed in the State of Montana.

Your last letter has attached to it a letter from the president of the insurance company, with which he sends you a brief prepared by his law department contending that the company has the right to re-incorporate as proposed, and is entitled to a license from your department. We have no pride of opinion in this matter and will say that I am always glad to get the viewpoint of the other side of a proposition such as is here presented and I appreciate the receipt of the brief from the law department of the insurance company in question. I have again given consideration to the proposition involved from the standpoint of the insurance insurance

company as presented by its lawyers, but I cannot see that our first position taken is wrong. I should be very glad to sanction the issuance of a license to the insurance company if I felt that our laws permitted it.

It is true, as suggested by the insurance company, that the organization, re-organization and dissolution of a corporation is controlled by the laws of the state or jurisdiction creating the corporation. The consolidation and merger of corporations, however, are not under the exclusive control of the state creating the particular corporation. A state has the power to refuse to permit foreign corporations to enter it and do business within its jurisdiction if it sees fit. It also has the power to prevent consolidations or mergers of corporations and to expel the foreign corporations which violate or disregard its laws. These propositions are so fundamental that citation of authorities is not required.

It is also true that a corporation has only such powers as are conferred upon it by its charter. The charter is granted by the state creating the corporation and the laws of such state attach to and become a part of the charter. This, however, does not mean that a charter once having been granted by a particular state the corporation may enter any state in the Union and exercise the same authority in such state as it might in the state creating it. As to the power a corporation may exercise, whether foreign or domestic, depends entirely upon the laws of the state in which it is accerting such powers. If the charter of the corporation here in question and the laws of Iowa are broader than those of the State of Montana, the corporation can go only to the extent or limit of our laws. On the contrary, if the laws of Montana were broader than the charter of the corporation and the laws of Iowa attached thereto, the corporation could go only to the extent or limit of its charter. These propositions also are fundamental in the law of corporations. The charter of a corporation and the laws of the state creating the corporation govern that corporation in a foreign state provided there is no conflict with the laws of such state. Paul vs. Va., 8 Wall, 168.

I recognize the fact that there is a distinction between the laws granting powers to a corporation and laws governing the organization and re-organization of a corporation. However, in this case we are dealing with an insurance company and the general supervision which the Commissioner of Insurance may exercise over such corporation. The rights and protection of the public are involved and the proposition of organization and re-organization of an insurance company has a direct bearing upon the safety of an insurance policy. It is for the Insurance Commissioner to enforce the insurance laws strictly with a view to protect the public in insurance matters. It must be presumed that a strict enforcement of insurance laws as designated by our legislature will best protect the public in such matters.

It certainly would not be argued by any one that the laws of Iowa would control in this state to the extent that an Iowa corporation could write both life and fire insurance when the Montana laws forbid such a blending of business—as they in fact do. The law further is conclusively established that a state may prevent any corporation, either foreign or domestic, from writing life insurance on what is known as the old line plan and on the mutual plan. It is also well established that a corpora-

tion cannot write both fraternal benefit life insurance and regular old line life insurance. There is no reason why Iowa could not pass a law permitting its corporations to write life insurance on both the mutual beuefit plan and the old line plan. If Iowa did permit such a blending of insurance business, no one would contend that an Iowa insurance company may enter the insurance field in Montana and write such blended business in contravention of the laws of Montana.

This is practically the proposition which is here involved. The laws of Iowa permit a fraternal insurance company to change its plan of doing business from the fraternal benefit basis to that of the old line insurance company. Our laws provide a definite method by which a fraternal benefit insurance company must wind up its business in case it is approaching insolvency. It does not permit a fraternal benefit insurance company to change to the basis of an old line insurance company. A company, therefore, which attempts to take such action in disregard of our insurance laws should not be licensed in the State of Montana.

The cases which are referred to in the brief submitted by the insurance company I do not believe have application to the question here involved. Those cases do not involve a conflict of laws between two states upon the proposition of insurance. The case of Canada and Southern Railroad Company vs. Gebhard, 109 U. S. 527, 27 Fed. 1020, cited by the insurance company, involves the power of a foreign railroad corporation to re-organize and re-adjust its financial affairs pursuant to the laws of the jurisdiction creating it, even though it affects bond owners of such railroad corporation residing in the State of New York, nor was that question involved. It was only a question of liability on certain bonds which had been issued. The other case cited by the insurance company, it being that of Royal Arcanum vs. Green, 237 U. S. 531, 57 Fed. 1089, is not in point here. The conflict involved in the case was not one of statutory enactment, but one of juricial construction of a contract of insurance. The Massachusetts court held that a fraternal mutual benefit insurance contract was subject to change in that its rates might be increased. The New York court in a subsequent case against the same company held that such a contract once having been entered into could not be changed. The insurance company was a resident of the State of Massachusetts and the Supreme Court of Massachusetts renrered its decision upon the same proposition involved before it was presented to the New York court. Under the circumstances, therefore, the Supreme Court of the United States held that under the full faith and credit clause of the Federal Constitution the contract as construed by the Massachusetts court was binding upon the New York court. The questions presented in both of these cases are so radically different from those presented in the proposition here involved that the cases given throw no light in this instance.

Under the circumstances, therefore, I am compelled to stand by my former opinion written December 20th, 1919. I would suggest, however, that the insurance company bring a suit in our Supreme Court in an attempt to compel you, as Insurance Commissioner, to issue the license requested. I realize that these questions are not free from doubt and that different minds may honestly and in good grace differ upon the questions

here presented. The insurance laws of our stat so far as the organization of insurance companies is concerned, have had but little construction by our Supreme Court and I welcome their presentation to that body for definite conclusions thereon. You might suggest this to the insurance company and assure them that we will extend them every courtesy consistent with the duties of our office.

Respectfully,

S. C. FORD,

Attorney General.