

MAINE STATE LEGISLATURE

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yes ✓
April 19, 1967

Harold Trahey, Deputy Commissioner

Insurance

Jerome S. Matus, Assistant

Attorney General

Special Charter Provisions of Domestic Life Insurance Companies.

FACTS:

Your memorandum of March 27, 1967 sets forth the following information:

"L. D. 1020, recently heard by the Committee on Business Legislation, provides for domiciliary insurance companies conducting directors' meetings either within or without the State of Maine.

"The language of Section 517, Title 24, Maine Insurance Statutes, appears to be clear in providing for directors' meetings of domiciliary companies being held in the State of Maine only.

"In view of the fact that the charters of all presently-licensed Maine life insurance companies contain the option for conducting directors' meetings within or without the State of Maine, we request your office to provide an Opinion as to whether or not such charter provision is in violation of the aforementioned Section 517.

"Also, in view of the fact that the present charter of the Maine Fidelity Life Insurance Company permits the location of its principal office to be without the State of Maine upon written approval of the Insurance Commissioner, we would appreciate a further opinion from you as to whether or not this charter provision, too, is illegal."

QUESTION #1:

Are Charter provisions of domestic life insurance companies which provide an option for conducting directors' meetings within or without the State of Maine in violation of 24 M.R.S.A. § 517?

QUESTION #2:

Is the charter provision of a domestic life insurance company which permits the location of its principal office to be without the State of Maine upon the written approval of the Insurance Commissioner in violation of 24 M.R.S.A. § 517?

ANSWER #1:

Yes.

ANSWER #2:

Yes.

OPINION:

The Constitution of the State of Maine provides:

"Corporations shall be formed under general laws, and shall not be created by special Act of the Legislature, except for municipal purposes, and in cases where objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State." Art. IV, Part 3, § 14. Effective date January 5, 1876. (Emphasis supplied)

The general laws do not provide for incorporation of life insurance companies. Since the objects of a life insurance company cannot otherwise be attained life insurance corporations may be formed by special act of the Legislature. These domestic life insurance corporations must be subject to the general laws of the State.

The Union Mutual Life Insurance Company was the first chartered life insurance company of the State of Maine. The creation of the company was authorized by the Private and Special Laws of 1848, Chapter 124. Article IV, Part 3, section 14 of the Constitution of the State of Maine quoted above was not in existence at that time. No specific reference was made in the 1848 charter as to where directors' meetings would be held. Section 4 of the charter did provide that the annual meetings shall be held: "at Augusta or such other place as the directors may deem more convenient to the majority of the members." Section 17 of the charter made it explicitly clear that the general laws of the State were not to apply to the Union Mutual Life Insurance Company. Section 17 reads as follows:

"Sect. 17. The provisions of chapter seventy-nine of the revised statutes shall not be construed as applicable to the said company; but this act shall at all times be liable to be amended, altered or repealed at the pleasure of the legislature." P & S Laws of 1848, Chapter 124, Section 17.

Chapter 79 of the Revised Statutes referred to in section 17 was the Revised Statutes of 1841, Chapter 79 which chapter contained the general statutory provisions relating to insurance companies.

In 1878 the Union Mutual Life Insurance Company was granted a revised charter by the passage of Private & Special Laws 1878 Chapter 74 an Act entitled "An Act to Consolidate, revise, and amend the various acts which constitute the charter of the Union Mutual Life Insurance Company." Chapter 74 stated in part:

"The various acts which constitute the charter of the Union Mutual Life Insurance Company are hereby consolidated and amended, so that the following shall be the charter of said company: . . ."

Section 12 of the 1878 revised charter provided:

"Nothing herein contained shall be construed to exempt said company from the operation of the general laws of the state."

Thus, it is clear that Private & Special Laws 1878, Chapter 74, section 12 changed the original charter provision of the Private & Special Laws 1848, Chapter 24, section 17.

This 1878 revised charter of the Union Mutual Life Insurance Company came into existence two years after Article IV, Part 3, section 14 was placed in the Maine Constitution.

The 1878 revised charter also came into existence two years after our Maine Legislature provided that:

"Sect. 12. All insurance companies hereafter incorporated and organized under the laws of this state, shall have their principal place of business in some town or city of this state, and a majority of its directors shall be citizens of the state." P. L. 1876, Chapter 144, section 12.

In 1881, three years after the 1878 revised charter of the Union Mutual Life Insurance Company, the Legislature amended the P. L. 1876, Chapter 144, section 12 by striking out the word "hereafter" and adding at the end of the section the following sentence:

"The meetings of the directors shall be held in this State." P. L. 1881, Chapter 57, section 1.

Thus, in 1881 the general law (P. L. 1876, Chapter 144, section 12 as amended by P. L. 1881, Chapter 47, section 1) was identical to the present statutory language of 24 M.R.S.A. § 517 which reads:

"§ 517. Office and meetings in State;
directors to be citizens.

"All insurance companies incorporated and organized under the laws of this State shall have their principal place of business in some city or town in the State and a majority of the directors shall be citizens of the State. The meetings of the directors shall be held in the State."

Also of extreme interest is the language of P. L. 1881, Chapter 57, section 3:

"Sect. 3. The provisions of any charter inconsistent with this act, are hereby repealed; and any by-law of any company inconsistent herewith is declared void from and after the passage of this act."

Thus making it clear that the provisions of the Union Mutual Life Insurance Company's revised charter as to the holding of the annual meeting of the directors "at Augusta or such other place as the directors may deem more convenient to a majority of the members," has to be construed as such other place within the State of Maine to be consistent with Article IV, Part 3, section 14 of the Constitution of the State of Maine and section 12 of the 1878 revised charter of the Union Mutual Life Insurance Company. The same construction must apply to the present charter provision concerning holding of annual meetings of the directors "at Portland, or such other place as the directors may deem more convenient to a majority of the members." Private & Special Laws 1951, Chapter 91, section 1.

Charter provisions of the other three specifically chartered domestic life insurance companies provide an option for conducting meetings of directors outside the State of Maine.

In 1961 the Maine Fidelity Life Insurance Company amended its charter by adding the following:

"Sec. 4. Directors. . . . They may hold their meetings within or without the State of Maine and may be residents of this State or any other state. Subject to the written approval of the Insurance Commissioner, the principal office of the company may be located without the State of Maine but stockholders meetings will be held within the State of Maine."
Private and Special Laws of 1961,
Chapter 75, section 4.

(Note that this provision permits the principal place of business of the Maine Fidelity Life Insurance Company to be outside the State of Maine upon written approval of the Insurance Commissioner).

In 1965 the Maine National Life Insurance Company, formerly the Maine Indemnity Company had its charter amended by providing:

"Sec. 3. Directors need not be stockholders and may be residents of this State or any other state and directors' meetings may be held within or without the State of Maine, but stockholders' meetings must be held within the State."
Private and Special Laws 1965, Chapter 2,
section 3.

In 1965 the Community Life Insurance Company's charter provided:

"Sec. 7. Directors. Directors need not be stockholders and may be residents of this State or any other state, and directors' meetings may be held within or without the State of Maine, but stockholders' meetings must be held within the State." Private and Special Laws 1965, Chapter 155, section 7.

The three quoted charter provisions are inconsistent with 24 M.R.S.A. § 517 (as to the option for conducting directors' meetings without the State and in the instance of the Maine Fidelity Life Insurance Company the provision permitting location of its principal office outside the State of Maine upon the written approval of the Insurance Commissioner) and must be considered in violation of Article IV, Part 3, section 14 of the Constitution of the State of Maine. As was stated by our Court in Associated Hospital Service of Maine v. George F. Mahoney and the Health Insurance Association of America, et al. Interveners, 161 Me. 391, when the question was raised as to a conflict between special charter provisions granting the Associated Hospital Service rights to offer extended benefits coverages and the general statutory law which did not give the power to offer extended benefits coverages. Our Maine Supreme Judicial Court said:

"Under section 14 of our Constitution quoted supra, the Public Law prevails."
Ibid 161 Me. 391 at 405.

Jerome S. Matus
Assistant Attorney General