original policy is to be treated as the "original application" for the purpose of applying the provisions of paragraph (2) of section 9037, *supra,* as has been contended, there would be no legal right, if the statute applies, to predate the new policy more than six months prior to the date when such application was made. If the Appellate Court of Illinois is correct in the foregoing opinion, and if the above statute applies to exchanges such as are under consideration in this opinion, then the reinsuring company making such exchanges is confronted with the peculiar situation of being unable to legally predate its policies and at the same time being liable as and to the same extent as if they had been predated. I do not think the statute requires such a construction. While I do not think the original application for the original policy can be treated as the application for the purpose of applying the provisions of the above statute, I do think that the validity of the new policy with respect to such an exchange as affected by the above statute, must be determined upon the basis of whether the original policy violates said section. If the original policy does not violate it, then I do not think giving to the new policy the same date would violate it. In other words, the insurance under the new policy which makes the original application a part of it, is properly treated as a continuation of the original insurance, and if the original policy does not violate the above statute, the new policy, being a continuation of it and bearing the same date, would not violate it.

INSURANCE COMMISSIONER: Whether number of directors of.....insurance company are controlled by by-laws or articles of incorporation.

February 10, 1933.

Hon. John C. Kidd,
Commissioner of Insurance,
Indianapolis, Indiana.

Dear Sir:

The ..... Life Insurance Company was organized in September, 1894, under chapter 136 of the Acts of 1883, entitled:

> "An act to provide for organizing and regulating the business of life insurance corporations, associations, and societies transacting business on what is known as

the assessment plan, and fixing penalties for the violation of its provisions, and declaring an emergency." Acts of 1883, page 203.

Thereafter, said company was re-organized under chapter 195 of the Acts of 1897, by making and filing the declaration required by section 5 of the act. Acts of 1897, page 321. Burns Annotated Indiana Statutes of 1926, section 8988.

On February 13, 1899, said company was again re-organized under the act of 1899, for the incorporation of legal reserve life insurance companies by making and filing the declaration required by sections 27 and 29 of the act. Acts of 1899, pages 40 and 41.

The original articles of incorporation fixed the number of directors at five. In the various re-organizations these articles have remained unchanged, but since the re-organization under the 1899 act, the by-laws have been amended so as to provide for ten directors.

You inquire first, as to whether in view of the above proceedings the legal number of directors is five as fixed in the original article, or ten as fixed in the by-laws enacted after the re-organization under the 1899 act, *supra*.

Section 27 of the 1899 act, above referred to as originally enacted, and as it existed at the time of the re-organization of the above company under it, provided in part as follows:

> "Any domestic corporation, association or society, organized under any law of this state, transacting business of life insurance, may be re-incorporated or re-organized under the provisions of this act, under its existing corporate name, by filing with the auditor of state a declaration of its desire to do so, signed and duly acknowledged by a majority of its board of directors, trustees or managers, with a statement in like manner, signed and acknowledged by them, that such corporation, association or society has insured the requisite number of lives as herein provided, or, if a stock company, that it has complied with the requirements of this act, concerning subscriptions to its capital stock, and provided also, they have deposited with the auditor of state securities herein provided for, whereupon the auditor of state shall file the same, together with his certificate of such filing, with the secretary of state,

who shall issue to such corporation, association or society a certificate of such re-incorporation or re-organization, under the seal of the state, and attach thereto copies of all papers so filed with the secretary of state, and the same shall be recorded in the office of the secretary of state, and copies thereof filed in the office of the auditor of state, and such corporation, association or society shall thereupon be deemed to be re-incorporated or re-organized under the provisions of this act."

Acts of 1899, page 40.

Section 29 of said act, as originally enacted, and as it existed at the time of the re-organization as above stated provided as follows:

"Nothing in this act shall be construed as affecting or governing life insurance companies, associations or societies, or accident insurance companies doing business on the assessment plan, or organized under any other law of this state; *but such life insurance companies may re-incorporate and avail themselves of the provisions of this act by complying with conditions as hereinbefore provided in this act.*" (Our italics.)

Acts of 1899, page 41.

The effect of the re-organization of said company under the 1899 act, *supra*, in express terms, therefore, was to authorize it to avail itself of the provisions of the 1899 act. The method for re-organization as then provided, is set out in section 27, *supra*, which clearly does not contemplate the filing of new articles of incorporation. Upon compliance with said section 27, the secretary of state under said original section was then required to issue to the corporation a certificate of such re-incorporation or re-organization which, as already stated, expressly authorized it thereafter to avail itself of the provisions of the 1899 act, as to all future transactions to the same extent as if it had been originally incorporated under said act. Muller v. State Life Insurance Company, 27 Ind. App. 45 at page 53.

The method of determining the number of directors of corporations organized under the 1899 act, is not very clearly stated. Section 4 of the act provides as to the election of the first directors that:

> "The subscribers to said articles of incorporation shall choose from their number a president, a secretary, a treasurer, and such number of directors, not less than five, as they may deem advisable, who shall continue in office until the first annual meeting of the stockholders, or of the insured, if a mutual company, and until their successors are duly chosen and qualified as hereinafter provided."
>
> Burns Annotated Indiana Statutes of 1926, section 8921.

Section 7 of said act provides further, that a corporation so organized:

> "may, by their board of directors, trustees of (or) managers, make by-laws and amendments thereto *not inconsistent with the constitution and laws of this state or of the United States,* which by-laws shall define the manner of electing directors, trustees or managers, officers of such corporation, and the qualifications and duties of the same, with terms of office, and, if a mutual company, the qualifications and privileges of the members and policyholders thereof." (Our italics.)
>
> Burns Annotated Indiana Statutes of 1926, section 8921.

The above provisions fall short of an express authorization for the fixing of the number of directors by the by-law, but it is equally clear that such a provision as to number of directors has no place in the articles of incorporation, of a corporation organized under the 1899 act. In view of this situation, I think it is reasonable to infer that it was the intention that the number of directors might be fixed by the by-law, subject to the limitation that the number shall not be less than five.

This authority became vested in the company referred to upon its re-organization. It is my opinion, therefore, that the number of directors of said company, as fixed by the by-law, assuming that it was legally adopted, is the legal number of directors of said company.

You also inquire whether the articles of incorporation of said company must be revised so as to comply in all particulars as to its statements with the required statements in arti-

cles of incorporation of companies organized in the first instance under the 1899 act. I think what has already been said, is a complete answer to this question. The method of re-organization under the 1899 act of existing companies, is set out in original section 27 of said act, already copied herein. Upon compliance with those provisions, the re-organization, so far as the state is concerned, in my opinion, was completed.

INSURANCE COMMISSIONER: Whether each form of policy issued by Lloyds Insurance Company must be filed with insurance commissioner.

February 10, 1933.

Hon. John C. Kidd,
Commissioner of Insurance,
Indianapolis, Indiana.

Dear Sir:

Your letter of February 10, requesting an opinion as to whether or not under section 9297 Burns R. S. 1926, and following sections, there shall be filed with the commissioner of insurance of the state, a copy of each form of policy issued by Lloyds Insurance Company, showing the name and address as well as the amount of subscription of each subscriber and also signed by the attorneys in fact.

In response to the above, I would advise that in my opinion, section 1 of such act refers to an organization of Lloyds in the State of Indiana and does not refer to Lloyds organizations of other states. This is borne out by the requirements that a majority of the persons, partnerships or corporations who shall engage in such business shall be bona fide residents of the state and by the further provision that the principal office in which the business is to be conducted, must be in the State of Indiana.

In construing section 2, it is my opinion, that the policies which are issued by such Indiana Lloyds, must show the name and address, as well as the amount of the subscription of each subscriber, and shall be signed by the attorneys in fact. While this section requires that a copy of each form of policy issued, shall be filed with the auditor of state, it does not refer to such copies as being required to show the name and address, etc., but to the policies themselves. Had it been the intention