

INSURANCE: Section 379.255 and Section 379.080, RSMo 1949 to be read together. Mutual and stock companies comprehended in said sections are permitted to invest assets in loans secured by real estate or personal property as collateral, after first investing in prime securities named in Section 379.080, RSMo 1949, in an amount required to meet paid-up capital in stock companies.

April 2, 1951



Honorable C. Lawrence Leggett
Superintendent, Division of Insurance
Department of Business and Administration
Jefferson City, Missouri

Dear Sir:

The following opinion is rendered in reply to your recent request reading as follows:

"The M.F.A. Mutual Insurance Company is an insurance company organized under the insurance code of the State of Missouri, and particularly under Article 7, Chapter 37, R. S. Missouri, 1939. Section 379.255, R. S. 1949, provides how the assets of a mutual company organized under Article 7 may be invested. This section states that the assets may be invested in the same manner as those of stock company. Section 379.080 makes a provision as to how the assets of a stock company may be invested.

"It is the contention of the M.F.A. that this section requires them to invest the first \$200,000.00 in either cash, government bonds, or improved unencumbered real estate worth double the amount loaned thereon. It is their further opinion that the balance of their assets may be invested in loans on growing crops, livestock, automobiles and other personal property up to 80% of the value thereof. They are of the further opinion that all assets over \$200,000.00 may be invested in real estate up to 80% of the value thereof.

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"I am enclosing herewith for your information copies of a brief submitted by the M.F.A. and a memorandum of the counsel of this Department. Will you please advise me: (1) Whether or not an Article 6 company may invest its assets over and above the amount of its capital stock in loans or personal property up to 80% of the value of the personal property. (2) Whether or not an Article 6 company may invest its surplus over and above the amount of its capital stock in real estate up to 80% of the value thereof. (3) In the event the investments mentioned in (1) and (2) may be made by an Article 6 company out of the assets above its capital stock, at what point may an Article 7 company begin its investments in similar assets?"

M.F.A. mutual insurance company was incorporated under the provisions of Article 7, Chapter 37, R. S. Missouri, 1939, and Section 5960 of said Article 7 is now found at Section 379.255, RSMo 1949, and provides as follows:

"No such company shall invest any of its assets except in accordance with the laws of this state relating to the investment of the assets of domestic stock companies transacting the same kinds of insurance."

Domestic stock companies referred to in Section 379.255, RSMo 1949 are specifically governed by Section 379.010 to 379.200, inclusive, RSMo 1949. Section 379.080, RSMo 1949 provides for the specific types of securities in which a required portion of the paid-up capital of a stock insurance company may be invested, and further provides as follows with respect to the investment of the remaining capital and assets:

"* * *and the remainder of the capital of said companies and their other assets may be invested either in the property or securities in this section above mentioned, or in loans safely secured by collateral worth, at its cash market value, not less than 20% in excess of the amount loaned thereon, * * *."

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The quoted excerpt from Section 379.080, RSMo 1949, was first inserted in the section by amendment to Section 7008, R. S. Missouri 1909, and accomplished by Laws of Missouri, 1911, page 271, and has remained unchanged to the present time. Section 379.080, RSMo 1949, was formerly Section 5918, of Article 6, Chapter 37, R. S. Missouri 1939, such article being referred to in paragraph 3 of the opinion request, and said section was the subject of amendment as late as 1947.

Section 379.080, RSMo 1949, is clear in its language relative to the investment of a company's assets over and above a stated paid-up capital, and the only additional requirement is that such assets be invested in loans safely secured by collateral worth, at its cash market value, not less than 20% in excess of the amount loaned thereon. The particular provision of this statute with which we are dealing is silent as to whether the loans allowed are to be made with real estate or personal property as collateral. No unsecured loans to individuals or corporations are authorized by the provision being construed. Each loan is to be secured by collateral having a cash market value. The statute contains no prohibition against securing the loans by personal property as collateral. The legislature has set a rule by which we are to determine when a loan is safely secured by collateral other than by specific collateral named in Section 379.080, RSMo 1949. Using the pronounced rule, there appears to be no prohibition in Section 379.080, RSMo 1949, against an insurance company subject to such statute from investing its assets over and above the amount of its capital stock, required to be paid up, in loans secured by personal property up to 80% of the value of the personal property.

What has been said relative to the use of personal property as collateral for loans out of funds over and above the capital stock requirement of an insurance company subject to the provisions of Section 379.080, will apply likewise to loans made with real estate as collateral. The statute makes no distinction between real estate and personal property as collateral and such a distinction may not be read into the statute.

Having determined that a domestic stock insurance company subject to the provisions of Section 379.080, RSMo 1949, may invest its assets, not necessary to secure its capital stock fund, in loans secured either by real estate or personal property as collateral, we come to the third and final question posed in the opinion request.

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In view of the fact that a mutual insurance company formed under the provisions contained in Sections 379.205 to 379.310, inclusive, RSMo 1949, is formed without a paid-up capital stock, what portion of its assets must be invested in the prime securities mentioned in Section 379.080, RSMo 1949, before it is allowed to make loans secured by real property or personal property as collateral? Since Section 379.255, RSMo 1949, heretofore cited, directs that such mutual insurance company is to invest its assets in accordance with provisions contained in Section 379.080, RSMo 1949, the mutual insurance company must first invest its assets in the prime securities specifically described in the section in the same amount required of stock companies, before it may invest its assets in loans secured by personal property or real property as collateral. In no other way may the statute be made to apply equitably to both stock and mutual companies.

CONCLUSION

It is the opinion of this department:

(1) That domestic stock insurance companies formed under the provisions contained in Section 379.010 to 379.200, inclusive, RSMo 1949, may invest its assets over and above the amount of its capital stock in loans or personal property up to 80% of the value of the personal property;

(2) That domestic stock insurance companies formed under the provisions contained in Section 379.010 to 379.200, inclusive, RSMo 1949, may invest its surplus over and above the amount of its capital stock in real estate up to 80% of the value thereof.

(3) That an insurance company formed under the provisions contained in Section 379.205 to 379.310, inclusive, RSMo 1949, may invest its assets in loans on personal property and real estate up to 80% of the value of such personal property and real property after it has first invested in the prime securities mentioned in Section 379.080, RSMo 1949, in an amount equal to the required paid-up capital of stock insurance companies named in said Section 379.080, RSMo 1949.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General