

SCHOOLS--School districts are prohibited from insuring in Farmer's Mutual Insurance Companies where the assessment liability is unlimited, irrespective of Section 6063a, Laws of Missouri 1931, page 240, but may insure in assessment company or other company where liability is fixed and would not exceed in any year the revenue provided for such year.

October 21, 1933



(Filed: No. 49)

Mr. John W. Kirkbride
Ravenwood, Missouri.

Dear Sir:

Re-insured 9-18-56

We are acknowledging receipt of your letter in which you inquire as follows:

"It is the desire of the Ravenwood School Board to take liability insurance on school children transported to and from our school. At a special meeting held last night there were two different insurance companies represented, one an old line company and the other the State Farm Mutual Company.

The representative of the old line company informed the Board that they were not allowed to insure with a Mutual Company such as the one I have mentioned. The one representing the Mutual Company told them that there was nothing to prevent them from insuring in his Company if they desired to do so.

The Board feels that they would like to get insurance as reasonable as possible, but at the same time they want to insure in a reliable company. The Mutual Insurance would be quite a saving to them if it is a reliable company and if there is nothing to prevent them from insuring in a Mutual Company.

I would be very grateful to you if you would write me your decision in regard to this. For your convenience I am sending you a pamphlet of the State Farm Mutual Company. An early reply would be greatly appreciated as our school starts Aug. 28, and the Board would like to have the insurance by that time."

Section 6059, R. S. Mo. 1929, provides as follows:

"The state reinsurance company herein provided for shall have the right and authority, under such restrictions and regulations as it may provide for in its constitution and by-laws, to reinsure any member of such corporation against loss upon any particular policy which has been written by said member. The board of directors shall have the right and authority to make and collect such assessments from the respective member from time to time as may be necessary for the payment of any losses under

the terms of the policy and necessary expenses of carrying on the business of said company, as may be provided for in the constitution and by laws of said company."

Section 6063a, Laws of Missouri 1931, page 240, provides as follows:

"All companies organized and existing under the provisions of this article, are authorized and empowered to accept as members thereof any school district of this state and to insure the real and personal property thereof as in the case of other members of such company, and any school district of this state may, by a two-thirds vote of the board of directors of such district, become a member of any such farmers mutual insurance company, and insure the real and personal property of such school district in such company as in the case of other members thereof and pay, out of the incidental funds of the district, for such insurance, and for all assessments lawfully made by such company, as in the case of other members of such company."

Under Section 6063a above, the Legislature has sought to authorize farmers mutual insurance companies to accept as members school districts of this State. Under Section 6059 above, the board of directors shall have the right to make and collect assessments from the members from time to time as may be necessary for the payment of any losses under the terms of the policy, and the necessary expenses of carrying on the business of the company.

Section 47 of Article IV of the Constitution of Missouri provides as follows:

"The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, * * *."

Section 12 of Article X of the Constitution of Missouri provides as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose* * *."

Under Section 6059 R. S. Mo. 1929, the board of directors may make and collect unlimited assessments against its members. If a school district were permitted to become a member of said

mutual insurance company, according to the above section of the statute, it would thereby become liable for an unlimited assessment. Whenever a school district becomes a member of such mutual insurance company, its assessment liability is for the protection and benefit of the other members of said mutual insurance company. By its very act of becoming a member it lends its credit for the benefit of its co-members, contrary to the provisions of Section 47 of Article IV. This necessarily must be true because the probability of any member being paid the amount of the loss sustained by it under these companies depends upon the solvency and credit of the other members which are liable to assessment. This potential liability on the part of the school district may become a real liability to a very serious extent, depending upon the extent of the loss sustained by the members of this company. There is no limit as to the amount of the assessments which farmers mutual insurance companies may exact from their members under the provisions of Article 15 of chapter 37, R. S. Mo. 1929. Liability of the school district as a member, therefore, could not be limited if it were a member of this insurance company any more than the liability of any individual member, except that Section 12 of Article X of the Constitution of Missouri forbids a school district to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for said year. When a school district or any individual or corporation becomes a member of such farmers mutual insurance company, it thereby lays itself liable to an unlimited and unstated liability, depending upon the amount of loss sustained by the company, unless its articles and by-laws provide for a stipulated maximum. Where the assessments are unlimited it would be in violation of the latter provision of the Constitution for a school district to become a member of a farmers mutual insurance company.

We are therefore of the opinion that in so far as Section 6063a, Laws of Missouri 1931, page 240, authorizes school districts to become members of farmers mutual insurance companies with unlimited assessment liabilities, that said statute is in conflict with the above constitutional provision. If the said farmers mutual insurance company has a fixed assessment liability and such fixed assessment liability would not, so far as the school district is concerned, result in it exceeding in any year the revenue provided for such year, then we believe it would be legal for a school district to be insured therein.

It is therefore the opinion of this Department that Section 6063a, Laws of Missouri 1931, page 240, is unconstitutional in so far as it authorizes a school district to become a member of a farmers mutual insurance company in all events. We believe that under said Section a school district may insure in a farmers mutual insurance company if the assessment for the year is fixed and the said assessment shall not result in the school district exceeding its revenue provided for such year, under the provisions of Section 12 of Article X of the Constitution; that it would be illegal for a school district, in view of the above constitutional provision, regardless of said Laws of 1931, to accept membership

Mr. John W. Kirkbride,

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in a farmers mutual insurance company where the assessment is unlimited and the amount of the assessment is dependent upon the amount of loss or conflagration occurring.

Very truly yours,

/s/Frank W. Hayes
Assistant Attorney General.

APPROVED:

Attorney General.