

INSURANCE:

Mutual casualty companies organized under Article 7, Chapter 37, is entitled to license to write surety insurance.

July 10, 1933.

7-29

Mr. C. E. Nelson,  
Actuary Insurance Department,  
Jefferson City, Missouri.



Dear Sir:

We are acknowledging receipt of your letter of June 29, 1933, in which you inquire as follows:

"A mutual casualty company, organized and operating under Article 7, Chapter 37 of the Revised Statutes of Missouri 1929, has requested authority to write surety insurance.

We are requesting an opinion from your office as to, first, whether a mutual casualty company can write fidelity and surety insurance and, second, if it can write such insurance can any special deposit be required? In considering this question we refer you to Sections 5793, 5795 and 5796 of Article 6 and to Section 5844 of Article 7.

Companies writing fidelity and surety business usually operate under more strict requirements than companies handling other lines of casualty business. This is due to the very large amount of risk as compared with the premium and also to the fact that fidelity and surety insurance, even more so than other lines of insurance, is very closely associated with matters of public interest. The Department in the past has licensed several mutual casualty companies from other states to write either fidelity or surety insurance, or both, in this state, but such companies have had very considerable deposits with their home insurance department."

Section 5844 R. S. Mo. 1929, provides:

1. "Any company organized under the provisions of this article is empowered and authorized to make contracts of insurance or to reinsure or accept reinsurance on any portion thereof, to the extent specified in its articles for the kinds of insurance following:
2. Liability insurance \* \* \* .
3. Disability insurance \* \* \* .

4. Automobile Insurance \* \* \*.
5. Steam Boiler insurance \* \* \*.
6. Use and occupancy insurance \* \* \*.
7. Miscellaneous insurance. Against loss or damage by any hazard upon any risk not provided for in this section, which is not prohibited by statute or at common law from being the subject of insurance, excepting life insurance and fire insurance."

A mutual casualty company, organized under Article 7, Chapter 37, of which the foregoing is a section, may engage in any of the kinds of insurance enumerated above. Under Provision 7 of the above section, such a company may engage in any kind of insurance, excepting that prohibited by statute or at common law, and excepting life insurance and fire insurance. Becoming a surety for another is a proper subject of insurance and is neither prohibited by statute nor at common law. Such insurance does not come within the exception of life insurance or fire insurance and, therefore, is not prohibited under subdivision 7. It is, therefore, our opinion that a mutual casualty company organized under Article 7, Chapter 37, may engage in writing surety insurance and that the Insurance Commissioner should issue the license upon the compliance of the company with Section 5845 R. S. Mo. 1929, which is as follows:

"No such company shall issue policies or transact any business of insurance unless it shall hold a license from the superintendent authorizing the transaction of such business, which license shall not be issued until and unless the company shall comply with the following conditions:

- (a) It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein;
- (b) The 'maximum single risk' shall not exceed twenty per cent of the admitted assets or three times the average risk or one per cent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk;
- (c) It shall have collected a premium upon each application, which premiums shall be held in cash or securities in which insurance companies are authorized to invest and shall be equal to not less than five

times the maximum single risk assumed, nor less than twenty-five thousand dollars;

(d) For the purpose of transacting employer's liability and workmen's compensation insurance the applications shall cover not less than one thousand five hundred employees, each such employe being considered a separate risk for determining the maximum single risk."

You inquire whether such company, on obtaining a license to write surety insurance, may be required to put up any special deposit, and refer us to Sections 5793, 5795 and 5796, of Article 6, Chapter 37, R. S. Mo. 1929.

Article 6 of Chapter 37 provides for the formation of insurance companies other than life insurance companies. Section 5793 provides that any number of persons, not less than 13, may associate and form a corporation to make insurance upon real and personal property, insuring against fire, wind-storm, etc.; insurance upon the health of individuals and against personal injury, and to insure the fidelity of persons holding places of public and private trust and the safe-keeping of books, papers, etc.; insure cattle and livestock against theft, disease, death, etc., and to do any and all kinds of legitimate insurance business, excepting life insurance and dealing in annuities.

Section 5794 provides that companies engaged in the fire insurance business may also issue sprinkler leakage insurance, and provides that such companies may also insure against loss and destruction of money, securities and all kinds of insurance on automobiles.

Section 5795 provides that any company having a paid up capital of not less than \$200,000.00 may insure the fidelity of persons holding places of public or private trust, and provides as follows:

"Provided, however, that no domestic corporation shall be licensed to do the business aforesaid until it has deposited \$200,000.00 with the insurance superintendent of this state in trust for the protection of its policyholders, such deposit to consist of cash, treasury notes or bonds of the United States, \* \* \*."

Article 6 of Chapter 37 is a general section for the incorporation of companies, as specified in the foregoing sections, other than life insurance. Article 7 deals with the formation of mutual insurance companies other than life and fire. There are no provisions in Article 7 of Chapter 37 which require a deposit to be made, as are found in Section 5795 which applies to companies organized under that Article.

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We do not believe that companies organized under the provisions of Article 7 are bound by the provisions applicable to companies organized under Article 6. Article 7 contains special provisions applicable to mutual insurance companies other than life or fire. Article 7 is an exception to the general provisions found in Article 6.

In *De Hart v. School District*, 263 S. W. 242, the court, in construing various Articles of the Chapter, says:

"It is an old and familiar rule for the construction of statutes that, where there is in the same statute a particular enactment, and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."

In *State v. Imhoff*, 238 S. W. 122, 125, the court says:

"We have said, not once, but a number of times, that where there are two acts and the provision of one has special application to a particular subject and the other is general in its terms, and if standing alone would include the same matter and thus conflict with the special matter, then the latter must be construed as excepted out of the provisions of the general act, and hence, not affected by the enactment of the latter."

In view of the foregoing, we do not believe that the sections contained in Article 6 can be read into Article 7 or made to apply to companies organized under Article 7. There are no provisions in Article 7 making similar requirements, as contained in Section 5795. We believe that a mutual casualty company, upon compliance with Section 5845 above, is entitled to have issued it a license to write surety insurance, and that it is not required to comply with the sections contained in Article 6 of the same Chapter.

Very truly yours,

  
Assistant Attorney General.

FWH:S  
APPROVED:

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Attorney General.