

INSURANCE:

FRATERNAL INSURANCE:

Senate Bill No. 286, known as the Fraternal Insurance Act, exempts voluntary unincorporated associations issuing insurance contracts such as the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen from the provisions of the fraternal laws, however, the women's auxiliaries of such brotherhoods must comply with the fraternal laws of Missouri, unless the insurance contracts involved are benefits provided exclusively through local or subordinate lodges. Such brotherhoods are suable entities in courts of this state when insurance contracts are involved.

June 23, 1939

Honorable Francis Smith
Missouri Senate
Jefferson City, Missouri



Dear Senator Smith:

We have received your request of June 20th, 1939, in which you inquire as to what effect, if any, Senate Bill No. 286, known as the Fraternal Insurance Act, has on certain organizations such as the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. Attached to your request is a memorandum asking specific questions in connection with the effect of the Act, which memorandum reads as follows:

"We are a Voluntary Unincorporated Association, chartered in the State of Ohio. Our Insurance Department is not a separate organization but is a part of our labor union, and we admit to membership only persons engaged in one or more crafts or hazardous occupations.

"How would we be affected by the following Sections of Senate Bill No. 286, and the House Amendments thereto?

"Sections 6001, 6002, 6004 and 6005 of the Bill.

"Would we be required to incorporate under the laws of Ohio by these sections, or does the provisions of Sections 6021 (a) exempt

us from all the provisions of these sections?

"Sections 6006 and 6006A of House Amendment No. 4.

"In view of the language of Section 5993 and Section 6021 (a), does the provisions of these Service Sections apply to us, and further, if they should apply on insurance matters, is there anything in the language of Section 6006 and 6006A, especially that on page 3, lines 20 to 27, inc, of amendment No. 4, that would tend to make us a suable entity on contracts and business other than insurance?

"Section 6021 (a) of the Bill.

"This Section has been the law for years and has always exempted us from the things above mentioned. Will it still do so?

"The Women's Auxiliaries to our organizations are also voluntary unincorporated associations and admit to membership, only the wives, mothers, daughters and sisters of our members. Will all the provisions of this bill apply to them and will they have to incorporate in the states in which they are now chartered?

"During the 1937 Session someone tried to make us a suable entity by amending Section 701, of the Statutes of Missouri, 1929. That was attempted by House Bill No. 23. We hope there isn't anything in this or any other bill that will succeed in doing that."

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The first question is whether, under sections 6001, 6002, 6004 and 6005 of the Bill, these organizations will be required to incorporate under the laws of the State of Ohio, or whether, section 6021 exempts them from the effect of such sections.

In the first place, section 1 of the new Act and also the title thereof, provides that:

" * sections 5990, 5991, 5992, 5994, 5995, 5996, 5997, 5998, 5999, 6000, 6001, 6002, 6004, 6005, 6006, 6010, 6013, 6014, 6015, 6016, 6020, and 6024, of Article 13, of Chapter 37, of the Revised Statutes of Missouri, 1929, entitled 'Fraternal Beneficiary Associations,' and relating to the definition, organization and regulation of fraternal beneficiary associations, and section 6021, Revised Statutes of Missouri, 1929, as amended at the Session of the Fifty-Seventh General Assembly, said section as amended appearing in the Session Acts of 1933, on Pages 273-274 thereof, relating to the exemption of certain societies, be and the same are hereby repealed and twenty-four new sections enacted in lieu thereof, pertaining to the same subject, to be known as sections 5990, 5991, 5992, 5994, 5995, 5996, 5997, 5998, 5999, 6000, 6001, 6002, 6004, 6005, 6006, 6010, 6013, 6014, 6016, 6020, 6021, 6024, 6029 (a), and 6029 (b), to read as follows:

It is apparent that the sections named and which were contained in Article 13, of Chapter 37, R. S. Missouri, 1929, dealing with "Fraternal Beneficiary Associations" were repealed and certain sections were enacted in lieu thereof to be known

by the same section numbers. The new sections enacted "in lieu thereof, pertaining to the same subject" and to be known by the same numbers, unquestionably were intended by the legislature to become a part of Article 13, of Chapter 37, of the Revised Statutes dealing with the "Fraternal Beneficiary Associations". It follows then, that the new sections enacted including 6001, 6002, 6004, 6005 and also 6021, are a part of and are included, or at least will be so, when the new act becomes a law, in said Article 13 of Chapter 37.

In substance sections 6001, 6002, 6004 and 6005, provide for the incorporation and licensing, together with the powers, duties and obligations, of Fraternal Beneficiary Associations, which are required to be incorporated and licensed by the terms of said Article 13.

Section 6021 of the new act reads in part as follows:

"Nothing contained in this article shall be so construed as to affect or apply to grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges, or to:

"(a) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business."

Section 6021 R. S. Missouri, 1929, and the same section as amended and contained in the Laws of Missouri, 1933, page 273, also provided that societies which limited their membership to those engaged in any one hazardous occupation, should be exempted from the provisions of the fraternal act in this language:

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"Nothing contained in this article shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge of Knights of Pythias), and the Junior Order of United American Mechanics (exclusive of the beneficiary degree or insurance branch of the National Council Junior Order United American Mechanics) or societies which admit to membership only those employed in any one hazardous occupation. * *"

It will be observed therefore, that the new section 6021 does not change in any way the law as contained in the repealed section 6021, in exempting from the provisions of the fraternal act such orders or associations which admit to membership only persons engaged in any one hazardous occupation.

So we can say that if the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen were exempted from the operation of the fraternal laws by the repealed section 6021, then the new section 6021 would likewise exempt said associations. The repealed and the new sections contain the same provisions as to hazardous occupations.

The repealed statute was considered by the courts on several occasions. For instance in the case of Roberson v. Brotherhood of Locomotive Firemen and Enginemen, 114 S. W. (2d) 136, (the defendant in this case being one of the associations about which you have inquired), the Kansas City Court of Appeals held that the membership of this brotherhood was engaged in a hazardous occupation, and therefore exempted from the fraternal laws by section 6021, the court said:

"The pleadings and the evidence disclose that defendant is a voluntary, unincorporated labor union, with a Grand Lodge, many subordinate lodges, and with thousands of members in the United States and foreign countries; that it has a representative form of government with a constitution and by-laws and practices secret ritualistic lodge work; that its membership is confined exclusively to one class of persons who are engaged in a single hazardous occupation, to wit, persons employed as locomotive firemen and enginemen; and that it carries on an insurance business, without profit, for the exclusive benefit of its members. # * * * * *

"Defendant was and is doing a fraternal beneficiary insurance business in Missouri and its contracts of insurance will be governed by the law applicable to such contracts. Bennett v. Brotherhood of Locomotive Firemen and Enginemen, Mo. App. K. C., 106 S. W. 2d 25, loc. cit. 26; Clark v. Grand Lodge, 328 Mo. 1084, 43 S. W. 2d 404, loc. cit. 409, 88 A. L. R. 150; Elliot v. Grand Lodge Brotherhood of Railway Trainmen, Mo. App. K. C., 95 S. W. 2d 829, loc. cit. 833. Under the provisions of section 6021, R. S. 1929, Mo. St. Ann. section 6021, p. 4588, defendant is exempt from all of the provisions of article 13, chapter 37, R. S. Mo. 1929, Mo. St. Ann. section 5990 et seq., p. 4563 et seq., which governs fraternal beneficiary companies. Therefore no part of same applies to the case at bar. Elliot v. Grand Lodge Brotherhood of Railway Trainmen. Mo. App. K. C., 95 S. W. 2d

829, loc. cit. 833.

We have no specific information regarding the Brotherhood of Locomotive Engineers, and its method of doing business. However, we assume that its operations are similar to that of the Brotherhood of Locomotive Firemen and Enginemen, as described in the Roberson case, supra, in which event the new section 6021 would apply with equal force, and would also exempt such association from the provisions of the fraternal law.

Your next question is whether or not sections 6006 and 6006a of the new enactment would apply to these associations.

These two sections when the same finally become a law, will likewise become a part of article 13, chapter 37, R. S. Missouri, 1929, dealing with fraternal beneficiary associations.

Section 6006 provides that no society doing business under the terms of the said article 13, shall issue policies or transact business in this state without first executing a power of attorney in writing, appointing and authorizing the superintendent of insurance to acknowledge or receive all lawful service of process for, and on behalf of such society.

Section 6006a provides that if any such society shall fail or neglect to file such a power of attorney with the superintendent of insurance for service of process, that the superintendent of insurance shall be deemed to have been properly appointed for this purpose and service upon such superintendent or any agent or adjuster of any such

association shall constitute good service. However since these two associations appear to be exempted from all the provisions of said article 13, and since sections 6006 and 6006a are, or may become a part of said article, the same will not be applicable to the two brotherhoods. We again quote from the case of Roberson v. Brotherhood of Locomotive Firemen and Enginemen, as follows:

"Under the provisions of section 6021, R. S. 1929, Mo. St. Ann. section 6021, p. 4588, defendant is exempt from all of the provisions of article 13, chapter 37, R. S. Mo. 1929, Mo. St. Ann. section 5990 et seq., p. 4563 et seq., which governs fraternal beneficiary companies."

We conclude then that the two service sections, that is sections 6006 and 6006a of the new act do not apply to the operation of the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. Here again we are assuming that the Brotherhood of Locomotive Engineers is a similar organization and conducts its business in the same or a similar way as the Brotherhood of Locomotive Firemen and Enginemen.

The next question is stated in the following language:

"The Women's Auxiliaries to our organizations are also voluntary unincorporated associations and admit to membership, only the wives, mothers, daughters and sisters of our members. Will all the provisions of this bill apply to them and will they have to incorporate in the states in which they are now chartered?"

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You state that the women's auxiliaries to such organizations are also voluntary unincorporated associations; that such associations admit to membership only the wives, mothers, daughters and sisters of the members of the brotherhoods. Unless a fraternal beneficiary association is exempted from the provisions of the fraternal act by the terms of section 6021 the full act will of course apply. As we understand the situation it cannot be said that the women members of the auxiliary organizations are engaged in "one or more crafts or hazardous occupations in the same or similar lines of business." Undoubtedly many housewives are members and also many women who have no occupation whatsoever. We gather from your letter that the only necessary requisite is that a woman must be either a wife, mother, daughter or sister of a member of one of the brotherhoods; that the women themselves need not be engaged in any particular line of endeavor or craft. Consequently, from the facts that we have sub-section (2) of section 6021 will not exempt the women's associations from the effect of said article 13, of chapter 37.

The only other part of section 6021 which might be applicable is part (1) thereof which reads as follows:

"Nothing contained in this article shall be so construed as to affect or apply to grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges."

We do not know whether the insurance benefits of the women's associations to which you refer "provide benefits exclusively through local or subordinate lodges" or not. It is quite apparent that said sub-section (1) means that each local lodge can provide insurance benefits for its members as a strictly local matter and thereby be exempted from the act. In other words, if each local lodge issues its own

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certificates to its own particular members and if each local lodge provides its own benefits which are paid only out of local funds, all of which is not connected even remotely with the grand, or head, lodge, then such arrangement would in our opinion exempt such societies from the provisions of article 13. If the certificates are not issued in this manner, and if such obligations are really obligations of the grand lodge, and are paid by the grand lodge, and not strictly out of the funds of a local lodge, then we do not believe such associations would be exempted from the fraternal act.

Since the features which will determine this question are entirely questions of fact and since we do not have such facts we cannot arrive at a conclusion as to the exact status of the women's auxiliaries.

Your next and last question reads as follows:

"During the 1937 Session someone tried to make us a suable entity by amending Section 701, of the Statutes of Missouri, 1929. That was attempted by House Bill No. 23. We hope there isn't anything in this or any other bill that will succeed in doing that."

We find nothing in the act which refers in any manner to the question of whether voluntary unincorporated associations are suable entities or not. The act does not change any existing law on the subject. However, we observe in passing that voluntary unincorporated associations appear to be suable entities under existing law when insurance contracts are involved. In the case of *Clark v. Grand Lodge of the Brotherhood of Railroad Trainmen*, 43 S. W. 2d 404, the Supreme Court of Missouri en banc said:

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"Evidently the statutes above mentioned, and there may be others, authorize voluntary, unincorporated associations such as defendant to carry on its business of insurance in this state and to make insurance contracts such as here involved. Contracts are not contracts unless they are enforceable. To say that an association like defendant can make contracts necessarily means valid contracts-- contracts that are binding on the parties and enforceable against them. It is an absurdity to say that defendant can make contracts of insurance but cannot be sued thereon. If defendant has legal capacity to make a contract of insurance, it has legal capacity to be sued thereon. If it is a legal entity when making such contracts, it retains such legal entity when sued thereon."

CONCLUSION

We conclude that voluntary unincorporated associations such as the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen are exempted from the provisions of the fraternal act by the newly enacted section 6021 of Senate Bill 286, because its members are all engaged in hazardous occupations. Further, that the newly enacted sections 6006 and 6006a relating to the service of process on fraternal beneficiary associations in legal proceedings are not applicable to such fraternal organizations. The sections are, or will be, a part of article 13, chapter 37 R. S. Missouri, 1929, and section 6021 exempts such fraternal from the pro-

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provisions of said article. We further conclude that the women's auxiliaries of such brotherhoods, which also appear to be voluntary unincorporated associations, are not exempted from the provisions of the fraternal act by section 6021, unless the insurance benefits are provided by and through the local or subordinate lodges. That is to say, that if each local lodge provides such insurance benefits as a strictly local proposition and the benefits are paid strictly out of local funds, and other local lodges or the grand or Lead lodge have no connection whatsoever with the insurance features or the proceeds therefor, then the act will not apply to such auxiliaries. If such facts are not strictly true the auxiliaries would not be exempted. Since the members of the women's auxiliaries are not engaged in one or more crafts or hazardous occupations, such societies cannot be exempted from the provisions of the fraternal act on that ground.

Further we find nothing in the new fraternal act which in any manner touches on the question whether voluntary unincorporated associations are suable entities or not, and the existing law on that subject has not been changed. However, when insurance contracts are involved under the existing law such voluntary unincorporated associations are suable entities and an action may be maintained against such associations on the insurance contract involved.

Respectfully submitted,

APPROVED:

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JFA:RW