

INSURANCE: Town mutuals may insure automobiles of members but coverage specifically limited to fire, lightning and windstorm.

August 13, 1941

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Honorable Ray B. Lucas
Superintendent of Insurance
State of Missouri
Jefferson City, Missouri



Dear Mr. Lucas:

We wish to acknowledge your request for an opinion under date of May 7, 1941, wherein you state as follows:

"On March 5, 1941, Mr. Max Wasserman, in reply to a request from the Insurance Department, wrote a letter expressing the opinion that a town mutual insurance company, as provided by Article XVI, Chapter 37, R. S. Mo., 1929, could not legally issue policies of insurance against hazards other than fire, lightning and windstorm, as specifically authorized by Section 6064, R. S. Mo., 1929. Upon receipt of that letter instructions were issued by me to Traders Town Mutual Insurance Company of Kansas City, notifying that Company to cease the writing of any insurances except insurance against the hazards of fire, lightning and windstorm. The Company, through its attorneys, has taken the position that subsequently enacted statutes, a part of the general insurance laws of this State, permit it to write other coverages, and in support of this contention the Company has filed a memorandum brief with the request that such brief be submitted to your office for consideration. The brief

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is transmitted to you with this letter, with the request that same be reviewed and your official opinion be given, as to whether or not a town mutual may write insurance against risks other than the risks of fire, lightning and windstorm, and, in event it should be your opinion that such companies may write risks other than those specifically stated by statute, whether or not such company would, by the same token, be subject to other laws of this state pertaining to fire insurance companies and specifically those statutes relating to unearned premium reserve liability and the Missouri Fire insurance rating act, as embodied in Article VIII of Chapter 37, R. S. Mo., 1929."

On August 1st we received a supplemental letter from you covering the above subject matter, which reads as follows:

"On May 7th, 1941, a request was made for an opinion pertaining to the insuring powers of town mutual insurance companies. Attached to our request was a memorandum brief prepared by attorneys representing the Traders Town Mutual Insurance Company of Kansas City, in support of the contention of that Company that it has been granted by subsequent legislation all the insuring powers granted to regular stock and mutual fire and marine insurance companies under Section 5905 R. S. Mo., 1939.

"During the recent session of the Legislature, the section above referred to was repealed and re-enacted, and among other changes, the re-enacted section limits the insuring powers granted therein to insurance companies authorized to transact fire insurance business in this

state under the provisions of Article VI of Chapter 37'. This revision measure was known as House Bill No. 345 and was 'truly agreed to and finally passed' by the Sixty-first General Assembly of Missouri and signed by the Governor on July 29, 1941. Attached hereto you will find a copy of the amended section, to the text of which you will undoubtedly desire to give consideration, in connection with our request for an opinion, dated May 7, 1941."

The question presented is whether a company incorporated and operating as a town mutual under Article 16, Chapter 37, R. S. Mo. 1939, may insure the automobiles of its members against loss or damage resulting from hazards other than fire, lightning or windstorm. The inquiry is prompted by the action of the Traders Mutual Fire Insurance Company of Kansas City, Missouri, which has undertaken to insure the automobiles of its members against loss by collision and other hazards covered by the ordinary insurance contract designated as "comprehensive coverage."

Section 6186, R. S. Mo. 1939, provides that town mutuals may insure the "property" of its members, providing in part as follows:

"Hereafter all town mutual fire and lightning, tornado, windstorm or cyclone insurance companies organized for the sole purpose of mutually insuring the property of its members against any loss incurred by them from fire, lightning or windstorm, as may be provided by its constitution and by-laws, and not inconsistent with the provisions of this article, shall be exempt from all laws of the state of Missouri governing other insurance companies: * * * * *"

And again, in Section 6190, R. S. Mo. 1939, town mutuals are authorized to insure the "property" of its members, providing in part as follows:

"Upon the certificate being filed in the recorder's office, and the license or certificate of authority issued as provided in section 6189 of this article, such company and all town mutual fire insurance companies heretofore organized shall be authorized to insure its members against damage or loss by fire, lightning or windstorms to property situated in any county in which such company is authorized to do an insurance business. * * * * *

The first question to be determined is - Whether the authority of town mutuals to insure the "property" of its members is broad enough to include insurance on the automobiles of its members.

Section 655, R. S. Mo. 1939, lays down certain rules to be followed in the construction of all statutes of this state as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute:
First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import;
* * * * *
eleventh, the word 'property' shall include real and personal property;
* * * * *

In the case of Allen v. Hartford Mutual Fire Ins. Co., 2 Md. 111, the court in holding that authority to insure

any kind of property against loss by fire includes personal as well as real property, said (l. c. 118):

"In the act of 1842, ch. 214, which is the original charter, we find given to the company, in the first section, 'full power and authority to make insurances on any kind of property, against loss and damage by fire.' More ample powers to make insurances, could not well have been given. The language used, is abundantly comprehensive, to include both real and personal estate, and all such interests in either, as the well settled principles of law recognize to be insurable interests."

There can be no doubt but that "an automobile is property." (Parry v. Maryland Casualty Co., 135 Misc. 883, 238 N. Y. S. 613, l. c. 614) And, consequently, we are of the opinion that town mutuals may insure the automobiles of its members.

The second question is - Having the authority to insure the automobiles of its members, are town mutuals limited to insure against the hazards of fire, lightning and windstorm, or may they also include such additional hazards, as theft, collision, etc?

32 C. J., Section 79, page 1028, states the following rule with reference to the power of insurance companies generally to insure against risks:

"The company may enter into a valid contract of insurance against such and only such risks as it is authorized to insure against by its charter or articles or the statutes under which it is created."

Thus, in the case of Delaware Farmers Mutual Fire Insurance Co., v. Wagner, 56 Minn. 240, 57 N. W. 656, it was held that authority to insure farm buildings, livestock

and grain against loss by fire did not cover the power to insure growing grain against hail. The court said:

"Section 338, c. 34, Gen. St. 1878, as amended at various times since its passage, provides that not less than 25 persons residing in adjoining towns, and owning, collectively, property of not less than \$25,000 in value, may form themselves into a corporation for the purposes of mutual insurance against loss or damage by fire, hail, lightning, or storms. Section 347 provides: 'Nor shall they insure any property other than detached dwellings and their contents, and farm buildings and their contents, and live stock, and hay and grain in the bin or stack.' The plaintiff corporation was organized under this statute, and the defendant became a member thereof. The amended articles of incorporation specify the hazards to be insured against, and the kinds of property to be insured, as specified in the statute. Neither the statute nor the articles authorize the insurance of standing or growing grain, and the statute, by its terms, expressly forbids it. Notwithstanding this, the plaintiff organized what is called the 'Hail Department' of its business, and went into the business of insuring standing grain against loss by hail. It attempted so to insure the defendant's standing grain, and issued him a policy purporting to do so. This is a suit brought by it to enforce payment of the premiums or assessments which he agreed to pay for such insurance. The defendant defended on the ground that such insurance was ultra vires, and beyond the powers of the corporation, and the court below so held, and ordered judgment on that

ground for the defendant. We are of the opinion that such attempted insurance was clearly ultra vires, and that the judgment for the defendant should be affirmed. So ordered."

For a companion case and to the same effect, see *Delaware Farmers Mutual Fire Insurance Co. v. Wagner*, 56 Minn. 243, 57 S. W. 656.

In the case of *Andrews v. The Union Mutual Fire Insurance Co.*, 37 Me. 256, a corporation was authorized to insure against fire whether caused by "accident, lightning or any other means." The court in holding that the company could not insure against lightning not resulting from fire, said (l. c. 259, 260):

"No power is by its charter granted to the company to insure property from loss or damage occasioned by any other element than fire. If a loss by fire happen by lightning, or any other cause not within the exception, it may be recoverable. There is no more authority given to insure against loss or damage occasioned by lightning, than by any other element, unless that damage happen by fire."

In the brief submitted by Attorneys for the Traders Mutual Fire Insurance Company they find no fault with the reasoning of the above decisions but state that they are not applicable for the reason that they deal with "situations where the only authority to make insurance existed by virtue of a single law which did not specifically cover the kind or class of insurance in dispute, or where a statute, after enumerating certain classes or kinds of insurance which a company was authorized to make, proceeded specifically to deny the power to make other kinds of insurance." They contend that in the instant case there is no express or even implied prohibition against making all kinds of insurance on automobiles, but that on the contrary, there is a statute which expressly authorizes it, namely, Section 5905, R. S. Mo. 1939, as follows:

"All insurance companies authorized to transact fire insurance business

in this state may, in addition to the business which they are now authorized by law to do, insure any property against loss of damage by water or other fluid or otherwise, resulting from the breaking of or injury to sprinklers, pumps, pipes, or other apparatus, conduits or containers, used for the protection of property from loss by fire, arising from causes other than fire, by water or other fluid entering through leaks or openings in building or pipes or conduits, and against loss or damage to such sprinklers, pumps, pipes, apparatus, conduits or containers; also liability for loss or damage to property caused by overflowing, leaking or breaking of water supply equipments. Such companies shall have the right to insure against the loss or destruction of money, securities or other valuables; to insure property against loss or damage caused by flood, frost, freezing, drought, insects, vermin or forces of nature; to insure property against loss or damage caused by explosion, smoke, riot, insurrection, civil commotion, strikes, sabotage, vandalism or malicious mischief; to make all kinds of insurance on automobiles and other motor vehicles, airplanes and aircraft in general, including fire, theft, transportation, collision and also liability for loss or damage to property caused by automobiles and other cars and vehicles, airplanes and aircraft in general or by objects falling therefrom: Provided, that any company which confines its business to insurance upon automobiles and other cars and vehicles, shall also have the right to insure against liability for damages arising out of the ownership, operation

or use thereof, and also to insure against liability for damages arising out of the ownership or operation of automobile sales agencies, automobile garages, automobile repair shops and automobile service stations."

It is to be noted that said section authorizes all insurance companies authorized to transact fire insurance business in this state to make all kinds of insurance on automobiles and they reason that since town mutuals are authorized to do a fire insurance business they come within the very definition of the companies to which said section 5905, supra, refers.

The brief submitted goes to great length to show by statutory and historical background that their position is sound and that they come within the scope of Section 5905, supra. In view, however, of House Bill No. 345, passed by the 61st General Assembly, with an emergency clause, and approved by the Governor on July 29, 1941, repealing Section 5905, supra, and enacting a new section in lieu thereof to be known as Section 5905, their entire argument fails. The Legislature by said section definitely lays to rest the question of what insurance companies doing a fire insurance business may, in addition to the business which they are now authorized by law to do, make all kinds of insurance against loss or damage to property caused by automobiles. Said new section 5905 provides:

"All insurance companies authorized to carry on, do and transact fire insurance business in this state under the provisions of Article 6, of Chapter 37 may, in addition to the business which they are now authorized by law to do, make insurance against direct, indirect or consequential loss or damage to property by water or other fluid or otherwise, resulting from the breaking of or injury to sprinklers, pumps, pipes, or other apparatus, conduits or containers used for the protection of property from loss by fire,

arising from causes other than fire, and against loss or damage by water or other fluid entering through leaks or openings in buildings or pipes or conduits, and against loss of or damage to such sprinklers, pumps, pipes, apparatus, conduits or containers; and against loss of or damage to property caused by overflowing, leaking or breaking of water supply equipments. Such companies, in addition, may make insurance against the loss or destruction of money, securities or other valuables; and against loss of or damage to property caused by flood, frost, freezing, snow, hail, ice, weather or climatic conditions, including excess or deficiency of moisture, rain or rising of the waters of the ocean or its tributaries, drought, insects, vermin or forces of nature, and against loss or damage by disease or other causes to trees, crops or other products of the soil; and against loss of or damage to property caused by explosion, smoke, smudge, riot, riot attending strike, strikes, sabotage, civil commotion, vandalism or malicious mischief, or caused by wrongful conversion, disposal or concealment of an automobile or other motor vehicle, whether or not handled under a conditional sale contract or subject to chattel mortgage; and against intentional or other damage to or loss of property of any kind, real or personal, caused by or arising from war, whether formally declared or not, civil war, rebellion, insurrection, invasion, bombardment, military or usurped power, or by any order of the civil authorities meant to prevent the spread of conflagration or epidemic or catastrophe; also to make all kinds of insurance on automobiles and other vehicles, or airplanes, seaplanes, dirigibles and aircraft in general, including theft, transportation, fire and collision; and

to make insurance against loss of or damage to property caused by automobiles and other vehicles and airplanes, seaplanes, dirigibles and aircraft in general or by objects falling therefrom, including liability for loss of or damage to property caused by automobiles and other vehicles and airplanes, seaplanes, dirigibles and aircraft in general or by objects falling therefrom; also to make insurance against any other loss or damage to property or an interest in property, not otherwise delegated to another class or kind of company; Provided that any company which confines its business to insurance upon automobiles and other cars and vehicles and airplanes, seaplanes, dirigibles and aircraft in general shall also have the right to insure against liability for damages arising out of the ownership, operation, or use thereof, and also to insure against liability for damages arising out of the ownership or operation of automobile sales agencies, automobile garages, automobile repair shops and automobile service stations. Provided, further, that existing corporations which by their charters are authorized to do the business of fire, or marine, or fire and marine insurance, may, without amending their charters, make any one or more kinds of insurance now or hereafter permitted to such corporations."

Under said section there can be no longer any question of the intent of the Legislature to restrict the writing of ordinary automobile insurance contracts, designated as "comprehensive coverage," to fire insurance companies authorized to do business in this State under the provisions of Article 6, Chapter 37, R. S. Mo. 1939.

From the foregoing we are of the opinion that town mutual insurance companies organized under Article 16,

Hon. Ray B. Lucas

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Chapter 37 of the Revised Statutes of Missouri, 1939, may insure the automobiles of its members but such coverage must be specifically limited to damage or loss by fire, lightning and windstorm only.

Respectfully submitted,

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APPROVED:

VANE C. THURLO
(Acting) Attorney-General

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