

FARMERS' FIRE AND : Farmers' mutual fire and lightning insur-
LIGHTNING INS. COS. : ance companies may not write policies
: against loss of personal property by theft.

November 17, 1947



Honorable William J. Gilwee
Assistant Prosecuting Attorney
of Jackson County
Kansas City, Missouri

Dear Mr. Gilwee:

This opinion is in response to your letter of recent date, raising the question whether the Farmers and Merchants Mutual Fire Insurance Company of Jackson County, Missouri may insure its members against theft under the provisions of Section 6177, R.S. Mo. 1939, as amended in Laws of Missouri, 1943, page 612, etc. Your letter is as follows:

"In the rural parts of Jackson County, Missouri, the farmers are troubled increasingly with the loss by theft of their hogs, cattle, corn and other personal property, and they feel that if they were mutually insuring each others' property that it would serve toward bringing greater alertness and cooperation in preventing these thefts.

"We would appreciate an official opinion from your department as to whether their local Farmers' Mutual Insurance Company may mutually insure the hogs, cattle, corn and other personal property of their members against theft under the provisions of Section 6177, R.S. Mo. 1939, as amended in Laws 1943, at page 612."

Section 6177, R.S. Mo. 1939, was enacted as an exemption statute. It was passed as a new Act, Laws of Missouri, 1889, page 55, with two sections. The Act provided for the exemption of farmers' mutual fire and lightning insurance companies from the terms of general

insurance laws of Chapter 119 of the then Revised Statutes.

The new Act of 1889 was amended, Laws of Missouri, 1891, page 165, and still remained an exemption statute, numbered Section 5909, with the further provision that a farmers' mutual fire and lightning insurance company could be incorporated by filing a copy of its constitution and by-laws with the Secretary of State, and paying the sum of \$10.00 into the State Treasury.

Said Section 6177, R.S. Mo. 1939, has been carried through the several revisions of the statutes, and in amendments in the Session Laws, as an exemption statute, with the still existing proviso for organization as noted above, and was so retained in the amendment thereof, Laws of Missouri, 1943, pages 612, 613 and 614. Throughout all of these revisions and amendments Article 15, Chapter 37, including said Section 6177, by whatever number, was titled, and is now so denominated, as "Farmers' Mutual Fire Insurance Companies * * *". There was no provision whatever in any amendment or revision of the statutes touching the subject matter of said Article 15, including Section 6177, authorizing such companies to include in a policy contract any risk upon the property of the members except loss by fire and lightning.

Article 15 of Chapter 37, R.S. Mo. 1939, furnishes in its several sections an interesting background for observation of the authority of farmers' mutual insurance companies to organize companies for different kinds of coverage. There are no less than three different kinds of farmers' mutual insurance companies that may be organized to carry on a mutual insurance business under said Article 15.

Said Section 6177 provides for the organization of farmers' mutual fire and lightning insurance companies.

Section 6181 of said Article 15, provides for the organization of farmers' mutual tornado, windstorm and cyclone insurance companies.

Section 6183 of said Article 15, provides for the organization of farmers' mutual hail insurance companies.

It is evident that the Legislature intended that the several kinds of farmers' mutual insurance companies, as identified by the three sections hereinabove mentioned, were to be confined strictly to writing risks covering only

the hazards mentioned in each of said sections.

The Legislature did not provide in said Article 15, or elsewhere, for the organization of farmers' mutual casualty insurance companies to cover loss by theft, nor has the Legislature included in any of said sections of said Article 15, the power of any of the three kinds of companies, fire, windstorm or hail, to engraft onto a contract against loss by any of such risks, the risk of loss by theft.

The amended Section 6177, Laws of Missouri, 1943, page 612, includes numerous changes by insertion of words, and elimination of words, but nowhere does it include authority for a farmers' mutual fire and lightning insurance company to write a policy against the hazard of theft nor to include a risk against theft in a fire and lightning policy contract.

Said Article 15 was again amended by the 64th General Assembly of this State in House Bill #351, which was truly agreed to and finally passed, by adding a new section to be known as Section 6177a immediately following Section 6177, R.S. Mo. 1939. Said Section 6177a is as follows:

"Farmers' mutual insurance companies organized in accordance with the provisions of this article are hereby authorized to issue extended coverage indorsements to their policies to insure the property of members against loss from windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke."

It will be observed that said amendment numbered Section 6177a, while authorizing extended coverage by indorsement in many particulars by companies organized under the named sections of said Article 15, does not include any coverage of theft in any of such classes of farmers' mutual insurance.

The writing of a risk against theft by any farmers' mutual fire and lightning insurance company in a fire policy or other policies in the present state of our statutes would, we believe, be ultra vires.

Section 5 of Article XI of the 1945 Constitution of this State is, in part, as follows:

"No corporation shall engage in business other than that expressly authorized in its charter or by law, * * *".

There being no statute in this State permitting the writing of theft insurance by farmers' mutual insurance companies as a part of the risks provided for would, we think, under the above prohibitive clause of the Constitution, render such unauthorized coverage void, if included in a policy issued by such company.

The only recovery which may be had, as we read the authorities, for "theft" under a fire policy is where fire was the proximate cause of the loss, and theft occurred during or after the on-set of the fire. This subject is very interestingly treated in Wood on Insurance, Volume 1, pages 264, 265, Section 106, which so states the rule, and cites the case of Newmark vs. Insurance Company, 30 Mo. 160. The Newmark case was one where a loss occurred by fire on a stock of goods owned by plaintiff covered by a policy issued by the defendant. Some of such goods were stolen as a consequence of being exposed by the fire. The controversy was whether the company was liable for the theft of the goods after the fire was extinguished as well as during the fire. The Court, l.c. 164, said:

"* * * the precise time when a theft occurs is not important, if it be occasioned directly by the fire. * * *".

There are numerous decisions by the Supreme Court and the Courts of Appeals of this State construing policies written on one line of risks with respect to health and accident, denying the right of recovery for a loss not strictly within the terms of the policy, for instance, death from typhoid under compensation insurance, as not being an accident causing an injury or death within the course of employment of the employee.

We find no Missouri case on the question of liability under a mutual fire policy for loss under any risk other than that of fire.

32 C.J. states, generally, the rule of liability of companies under the general head of "Mutual Companies", page 1018, l.c. 1028, the following:

"* * * 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. * * *".

The above Corpus Juris text cites, under footnote 47, numerous cases from many jurisdictions holding that a company authorized to insure property on one class of risks was not liable for a loss on an entirely different kind of risk. Such footnote, with comments on several of such cases, cites the following:

In the Wisconsin case of O'Neil vs. Mut. F. Ins. Co., 38 N.W. 345, it is held:

Under authority to insure detached dwellings, farm buildings, etc., a mutual company has no power to insure an incubator building.

In the Minnesota case of Delaware Farmers' Mut. Ins. Co. vs. Knuppel, 57 N.W. 656, it is held:

Authority to insure farm buildings, live stock, and grain against loss by fire does not cover the power to insure growing grain against hail.

In the Pennsylvania case of Knapp vs. North Wales Mut. Live Stock Ins. Co., 11 Montg. Co. (Pa.) 119, it was held:

Authority to insure furniture, goods, wares, merchandise, and effects does not cover live stock insurance.

In the Michigan case of Preferred Masonic Mut. L. Ins. Co. vs. Giddings, 70 N.W. 1026, it was held that:

Under authority to issue policies payable on the death of insured that a policy payable on the occurrence of total disability is unauthorized.

In the Massachusetts case of Knowlton vs. Bay State Beneficiary Assoc., 50 N.E. 929, it was held that:

Under a statute restricting casualty insurance on the assessment plan to cases of accidental death or disability such a company has no power to insure against disability from sickness.

So, it seems, considering the above, that Section 6177, R.S. Mo. 1939, as amended, Laws of Missouri, 1943, pages 612, 613 and 614, does not provide for the insurance of personal property by mutual fire and lightning insurance companies against loss by theft.

CONCLUSION

It is, therefore, the opinion of this Department that farmers' mutual fire and lightning insurance companies are not authorized by the terms of Section 6177, R.S. Mo. 1939, as amended, Laws of Missouri, 1943, pages 612, 613 and 614, or any other section of the statutes of the State of Missouri, to mutually insure the hogs, cattle, corn or other personal property of their members against theft.

Respectfully submitted,

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APPROVED:

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