

INSURANCE: 1) Agents of companies holding certificates of authority from Division of Insurance must be licensed.
INSURANCE AGENTS:
LICENSES: 2) Certain mutual insurance companies must procure certificates of authority and agents of such companies must be licensed.
MUTUAL INSURANCE COMPANIES: 3) Certain mutual insurance companies need not procure certificates of authority and agents of such companies need not be licensed.
4) There are no "grandfather" exemptions from examination requirements for licensing of agents of mutual companies who were unlicensed agents prior to effective date of Sections 375.012 through 375.028, Cum. Supp.

OPINION NO. 40 (1966)
382 (1965)

November 3, 1966

Honorable Robert D. Scharz
Superintendent of Insurance
Jefferson Building
Jefferson City, Missouri



Dear Mr. Scharz:

I.

Reference is made to your request for a formal opinion from this office stated as follows:

"We hereby request your formal opinion interpreting Senate Bill No. 94 of the 73rd General Assembly, now Missouri Revised Statutes 375.010, et seq, as to whether the statute is meant to include agents of Fraternal Benefit Societies, § 378, and County, Town and Farmers' Mutual Property Insurance Companies § 380, and therefore encompassing all agents in this State selling all insurance or annuity contracts except those specifically mentioned in the statute.

We request this opinion as it would appear that the agents contemplated by the law as requiring a license include the agents of organizations under those latter two sections which negotiate, procure or make any insurance or annuity contract."

Prior to the enactment of Senate Bill No. 94 in 1965, agents for insurance companies were licensed pursuant to Section 375.010, RSMo. (All statutory references herein are to the Missouri Revised Statutes, 1959, as amended unless otherwise indicated.) Your office has informed this office that by the administrative interpretation of your office agents of Fraternal Benefit Societies, County Mutual Insurance Companies, Town Mutual Insurance Companies,

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Farmers' Mutual Insurance Companies and Farmers' Mutual Property Insurance Companies were exempt from the application of Section 375.010. Your office considered such agents to be exempt by reason of statutes exempting the companies for which they acted as agents from the laws of this State applicable to other insurance companies, viz. Sections 378.020, 380.060, 380.290, 380.490 and 380.800. However, some Farmers' Mutual Property Insurance Companies, organized and operating pursuant to the provisions of Sections 380.580 to 380.840, requested that the agents of such companies be licensed pursuant to Section 375.010 (2), RSMo 1959, and licenses were issued to such agents by you pursuant to Section 375.010 (3), RSMo 1959. This office has not been informed as to why these companies requested that their agents be licensed or as to why you or your predecessors in office licensed such agents in view of the administrative interpretation by your office that such agents were exempt from the provisions of the Licensing Law.

Senate Bill No. 94 repealed Sections 375.010 and 375.020, and ten new Sections were enacted in lieu thereof. This office has analyzed the provisions of the old law together with the provisions of the new law from the point of view of determining any change in the scope of the law to insurance agents subject to the licensing provisions. Section 375.010, RSMo 1959, contained three numbered paragraphs. Paragraph 1 required insurance companies to procure a certificate of authority to do business in this State from the Superintendent of Insurance; paragraph 2 provided for the issuance of agents' licenses to persons upon the request of an authorized representative of such companies; and paragraph 3 authorized the agent licensed pursuant to paragraph 2 to act as agent for the company appointing him. Paragraph 2 of the cited statute was amended by Senate Bill No. 165 of the 71st General Assembly in 1963, and it appears in the Revised Statutes as Section 375.010 (2) Cum. Supp. 1963. The licensing procedure remained substantially the same with the inclusion of the specific requirements for a written application by the company requesting the issuance of the license and sworn answers to interrogatories by the prospective agent.

The new insurance agents' licensing law has been incorporated into the Revised Statutes as Sections 375.010, 375.012, 375.014, 375.016, 375.018, 375.021, 375.023, 375.025, 375.027 and 375.028, Cum. Supp. 1965. Former Sections 375.010 (1), RSMo 1959 and Cum. Supp. 1963, requiring insurance companies to procure certificates of authority from the Superintendent of Insurance, has been reenacted without any change whatsoever and appears in the new law as Section 375.010 Cum. Supp. 1965. Former Section 375.010 (3), RSMo, 1959 and Cum. Supp. 1963, has been reenacted without any change whatsoever as Section 375.021 Cum. Supp. 1965.

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As noted above, the licensing procedure for agents under the old law was provided in Section 375.010 (2), RSMo Cum. Supp. 1963. Under the procedure, application for the license was made by a company and such application was supported by sworn answers to interrogatories by the prospective licensee. The cited section has been repealed and new licensing procedures have been provided in lieu thereof by Section 375.018. Under the new procedures, written application under oath is made to the Superintendent directly by the prospective licensee; a certificate executed by an authorized representative of the company for whom the prospective licensee is to act must be filed with the Superintendent attesting to the applicant's competency and trustworthiness; and the applicant must submit to and pass a written examination conducted by the Superintendent. Thus, the procedural changes may be summarized as follows: Formerly application for an agent's license was made by the company for whom he would act as agent, whereas under the new law, application is made directly by the prospective licensee and certification of the applicant is made by the company; and formerly competency to act as an agent was determined by the applicant company, whereas under the new law, competency is determined by the Superintendent based upon a written examination.

The insurance agents' licensing law deals with three subjects: 1. Certificates of authority or licenses for insurance companies; 2. Licenses of agents for insurance companies; and 3. The relationship between licensed companies and licensed agents of such companies. The first Section (375.010) is, and has been for many years, the general provision which requires companies to have certificates of authority before engaging in the insurance business. The second Section (375.012) defines "insurance agent" in general terms. The third Section (375.014) forbids any person to act as an insurance agent unless he is licensed and forbids any insurance company to pay any commission or compensation to an unlicensed agent. The fourth Section (375.016) provides that a license shall authorize an agent to act on behalf of a company named in the license which is authorized to engage in the insurance business. The fifth Section (375.018) details the procedure for obtaining an agent's license and includes the requirement that an insurance company who licenses an agent shall pay an annual license fee of \$2.00. The sixth Section (375.021) is, and has been for many years, a provision authorizing a licensed agent to represent a particular company, requiring the company to pay the fee for the agent's license, requiring the company to furnish a list of its agents at the beginning of each licensed year and to keep such list up to date by advising the Superintendent as to terminations and address changes as they occur.

Thus, it appears that throughout the entire act the agents referred to are persons who are acting as agents on behalf of companies which hold certificates of authority to engage in the

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insurance business in this State pursuant to the first Section of the act. The Supreme Court held in State v. Stone, 118 Mo. 388, 24 S.W. 164, that the provisions of the statutes for the licensing of companies and the provisions of the statutes for the licensing of agents were cognate legislation and must be construed together. Therefore, the conclusion follows that the insurance agents' licensing law is applicable only to those persons who act as agents for companies which hold certificates of authority to engage in the insurance business from the Superintendent of Insurance.

It has been noted earlier in this opinion that the interpretation by your office of many years standing has been that agents of Fraternal Benefit Societies, County Mutual Insurance Companies, Town Mutual Insurance Companies, Farmers' Mutual Insurance Companies and Farmers' Mutual Property Insurance Companies were exempt from the provisions of the agents' licensing law. This interpretation resulted from exemption statutes applicable to these various companies. Section 378.020, applicable to Fraternal Benefit Societies, is typical of these exemption statutes and provides as follows:

"Except as herein provided, such societies shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein."

Other exemption statutes and the companies to which they apply are as follows: Section 380.060, County Mutual Insurance Companies; Section 380.290, Town Mutual Insurance Companies; Section 380.490, Farmers' Mutual Insurance Companies; and Section 380.800, Farmers' Mutual Property Insurance Companies. It is noted that each of the exemptions referred to above is applicable to the company in regard to the provisions of other insurance laws. None of these exemption statutes has been construed by the courts in regard to the application of the insurance agents' licensing law to the agents of such companies. The exemption provisions have been construed to mean that the valued policy law, the statute fixing penalties for vexatious refusal to pay losses and the nonforfeiture provisions of the general life insurance law are not applicable to mutual companies. See Traders Mutual Fire Insurance Company v. Leggett, 284 S.W.2d 586, 1.c. 591.

The interpretation by your office, having been adopted and

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adhered to for many years, is entitled to great weight in construing the statute. However, the interpretation of the statute by your department can only be invoked where the language of the statute is ambiguous or doubtful. State ex rel. National Life Insurance Co. of Montpelier Vt. v. Hyde, 292 Mo. 342, 241 S.W. 396, l.c. 400. Guided by these principles, this office has examined the relationship between the agents' licensing law and the statutory provisions applicable to the insurance companies with exemption statutes referred to above.

The legislature has enacted comprehensive statutory provisions covering the entire field of insurance. Chapter 374 established the Division of Insurance, provided for the appointment of the Superintendent and made provision for the internal administration of the agency. Chapter 375 enacted provisions applicable to all insurance companies. Chapter 376 enacted specific provisions concerning life and accident insurance. Chapter 377 enacted provisions for assessment plan and stipulated premium plan life insurance. Chapter 378 enacted specific provisions concerning Fraternal Benefit Societies. Chapter 379 enacted specific provisions in regard to insurance other than life. Chapter 380 enacted specific provisions in regard to County, Town, Farmers' Mutual Insurance Companies and Farmers' Mutual Property Insurance Companies. Chapter 381 enacted specific provisions in regard to title insurance.

Section 375.010 is a general statutory mandate prohibiting any company from transacting any insurance business in this State unless it procures a certificate of authority from the Superintendent of the Insurance Division authorizing it to do an insurance business. The specific statutory requirements for a certificate of authority are found in the other statutory provisions applicable to particular kinds of insurance companies. Provisions in regard to the issuance of a certificate of authority to a joint stock life and accident insurance company are set forth in Section 376.090. Provisions applicable to the issuance of a certificate of authority to mutual life and accident insurance companies are found in Section 376.130. The renewal of certificates of authority by life and accident insurance companies is provided for by Section 376.470. Certificates of authority to industrial and prudential insurance companies is provided for by Section 376.730.

Specific statutory provisions in regard to certificates of authority for other insurance companies are as follows: Assessment plan life insurance companies, Sections 377.040 and 377.140; joint stock companies for insurance other than life, Section 379.055; mutual fire and marine companies, Section 379.075; mutual companies other than life and fire, Section 379.235; and certificates of authority for companies other than life upon reorganization, Sections 379.555 and 379.625. All of the companies referred to above are subject to the general insurance laws, and the specific statutory provisions for certificates of authority relate

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back to the general provision concerning certificates of authority set forth in Section 375.010.

An examination of the specific statutory provisions relating to insurance companies with statutory exemptions from the general insurance laws reflects that the following companies are required to procure a certificate of authority from the Superintendent of Insurance before commencing business and are required to renew such certificates of authority with the Superintendent of Insurance annually: Fraternal Benefit Societies, Sections 378.050 and 378.150; Town Mutual Insurance Companies, Section 380.300; and Farmers' Mutual Property Insurance Companies, Section 380.590. The statutes do not require County Mutual Insurance Companies and Farmers' Mutual Insurance Companies to procure certificates of authority from the Superintendent of Insurance.

It is a cardinal rule of statutory construction that statutes in pari materia are to be construed together and no one section or portion of all the sections is to be singled apart for consideration from all other sections; *Fleming v. Moore Bros. Realty Co.*, 251 S.W.2d 8. Furthermore, all provisions of the law on the same subject matter should be construed together in harmony so as to work out and accomplish the central idea and intent of the legislature; *In Re McArthur's Estate*, 207 S.W.2d 546. Section 375.010 is a general statute in regard to the issuance of certificates of authority to insurance companies. The same subject matter is the object of specific legislation for particular insurance companies in Chapters 376, 377, 378, 379 and 380. The statutory provisions are in pari materia and must be construed together.

It has been concluded that all agents of insurance companies which hold certificates of authority from the Superintendent of Insurance are subject to the provisions of the agents' licensing law. The statutory provisions in this regard are clear and unambiguous. Therefore, the administrative interpretation by your office exempting the agents of certain companies who hold certificates of authority from your Department from the provisions of the agents' licensing law is erroneous. No exemption has been made for agents of Fraternal Benefit Societies, Town Mutual Insurance Companies and Farmers' Mutual Property Insurance Companies. These companies are all required to procure certificates of authority from the Superintendent of Insurance. Therefore, agents for these companies are subject to the provisions of the agents' licensing law.

This conclusion is consistent with *City of Boonville v. Teters*, 112 S.W.2d 82, 1.c. 83 and 84, wherein the court stated as follows:

"The fact that the provisions of chapter 37

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do not apply to mutual insurance companies cannot be interpreted to mean that mutual companies are not insurance companies and that the agents of mutual companies are not insurance agents."

Further support for this conclusion is found in *City of Cape Girardeau v. Comer*, 119 S.W.2d 1005, wherein the court concluded that an insurance company and its agent are not one and the same person and immunity to the company does not extend to the agent.

II.

You have made a supplemental request to the questions raised under I, *supra*, stated as follows:

"If it is the opinion of your office that Senate Bill 94 does include agents of Fraternal Benefit Societies, and County, Town, and Farmers Mutual Insurance companies, then we would like an opinion as to whether or not agents of the above companies who had been selling insurance prior to the effective date of the new law would have to be licensed and submit to the written examination. This question arises because of the fact that prior to the effective date these agents were not licensed by this Division or any other state agency."

Your request assumes that the law did not require agents of Fraternal Benefit Societies and County, Town and Farmers' Mutual Insurance Companies to be licensed prior to the effective date of Senate Bill 94. This office has concluded under I, *supra*, that agents of Fraternal Benefit Societies, Town Mutual Insurance Companies, and Farmers' Mutual Property Insurance Companies were required to be licensed under the former agents' licensing provisions of the statutes and that the administrative interpretation by your office that such agents were exempt from the licensing provisions of the statutes is erroneous. This office has also concluded that the agents of County Mutual Insurance Companies and Farmers' Mutual Insurance Companies were not required to be licensed under the former law and are not required to be licensed under Senate Bill 94.

Interested parties have submitted memoranda for the consideration of this office in which arguments are developed that agents of such insurance companies who have not been licensed in the past can be licensed under the new law without the requirement of submission to written examinations. It is contended that to

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require an examination before licensing such agents would be unconstitutional in violation of the due process clauses of the United States Constitution and the Missouri Constitution, the equal protection of the laws clause of the United States Constitution and Federal and State constitutional provisions prohibiting the impairment of the obligation of contracts and laws which are retrospective in operation. These memoranda assume that such agents were operating lawfully when Senate Bill 94 was enacted. As noted above, this is an erroneous assumption. Therefore, the arguments advanced by these memoranda are not of significance in consideration of the question which you have raised.

Section 375.018, RSMo Cum. Supp. 1965, provides exceptions from the examination requirement as follows:

- "4. No examination shall be required of
- (1) Applicants for the timely annual renewal of a license;
 - (2) Applicants for a license covering the same kind or kinds of insurance business as to which the applicant is currently licensed, or was licensed in this state within the six months preceding the date of application, other than a temporary license under section 375.027;
 - (3) An applicant who is a ticket selling agent or representative of a common carrier or other company who acts as an insurance agent only in reference to the issuance of insurance contracts primarily for covering the risk of travel;
 - (4) An applicant who holds a current license in another state which requires a written examination satisfactory to the superintendent;
 - (5) An applicant who is an owner of an individually owned business, his employee, or an officer or employee of a partnership or corporation who solicits, negotiates or procures credit life, accident and health or property insurance in connection with a loan or a retail time sale transaction made by the corporation, partnership, or individual business, or in a business in which

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there is conducted wholly or partly retail installment transactions under chapter 365, RSMo;

(6) Any person who is licensed as an agent upon October 13, 1965;

(7) Any person, firm or corporation selling title insurance."

Subparagraphs (1) and (2) are "grandfather provisions" which are applicable to agents who were licensed prior to the enactment of Senate Bill 94. No examination is required for the renewal of the licenses of such agents. These exemption provisions have no application to agents who were not licensed prior to the enactment of Senate Bill 94. Even though agents of certain companies were not required to be licensed by your office through an erroneous interpretation of the law, the grandfather provisions referred to cannot be construed to permit the licensing of such agents without requiring an examination.

Research by this office has not disclosed cases in regard to fact situations analogous to the question under consideration. In *McClellan v. Kansas City*, 379 S.W.2d 500, the Supreme Court en banc discussed many principles applicable to the licensing powers of the State and municipalities as political subdivisions thereof. The principles discussed include questions of discrimination and the validity of grandfather clauses which give credit to prior experience in the examination of prospective licensees. *City of St. Louis v. F. Meyrose Lamp-Manuf's Co.*, 41 S.W. 244, 1.c. 245, summarizes cases upholding examination requirements for the licensing of numerous businesses and professions. The conclusions reached in this opinion are consistent with the principles developed in the referenced cases.

CONCLUSIONS

All agents of insurance companies which are required to procure certificates of authority to do business from the Superintendent of Insurance must be licensed by the Division of Insurance. Fraternal Benefit Societies, Town Mutual Insurance Companies and Farmers' Mutual Property Insurance Companies are required to procure certificates of authority from the Superintendent of Insurance. Therefore, agents of these companies must be licensed by the Division of Insurance. County Mutual Insurance Companies and Farmers' Mutual Insurance Companies are not required to procure certificates of authority to do business from the Superintendent of Insurance, and therefore, the agents of these companies are not required to be licensed by the Division of Insurance.

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who were acting as such agents prior to the enactment of Senate Bill 94 (Sections 375.012 through 375.028, Cum. Supp. 1965) but who were not licensed by the Superintendent of the Division of Insurance are not exempt from the written examination requirement of the statutes pursuant to Section 375.018-4(1), (2) or (6).

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas J. Downey.

Yours very truly,

A handwritten signature in black ink, appearing to read "Norman H. Anderson". The signature is written in a cursive style with a large, prominent initial "N".

NORMAN H. ANDERSON
Attorney General