

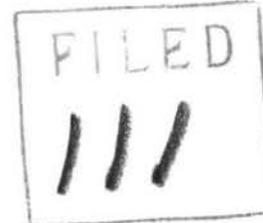
INSURANCE:
MUTUAL INSURANCE COMPANIES:

Farmers Mutual Insurance Companies may not be authorized by the Superintendent of Insurance to do an insurance business outside the State of Missouri.

OPINION NO. 111 (1966)
488 (1965)

November 15, 1966

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



Dear Mr. Scharz:

Reference is made to your letter requesting the formal opinion of this office as follows:

"May a Farmers Mutual Insurance Company organized under the old Farmers Mutual Law (Sections 380.480 to 380.570) which has, by authority of Section 380.600, elected to be governed by the new 1953 Farmers Mutual Act (Sections 380.580 to 380.840) be allowed by the Superintendent of Insurance to amend its Articles of Incorporation so as to do an insurance business outside the State of Missouri.

"We would like for you to assume in this question that the company has met all the financial requirements necessary to operate on a statewide basis and also has the required net insurance at risk.

"For your information, we are of the opinion that this type of company cannot operate outside the State of Missouri because of the limitations placed on them by the old law. Further, we do not believe that the new law allows this because of the territorial restrictions placed on them for various lines of insurance and there is no explicit authority for this contained therein. We also do not believe that it was the intention of the legislature to allow these companies to operate outside the state as they exempted them from the general insurance laws."

The 1953 Farmers Mutual Insurance Company Act (Sections 380.580

Honorable Robert D. Scharz

to 380.840, RSMo 1959) was enacted by the 67th General Assembly as House Bill No. 249. The first section of the act is as follows:

"Sections 380.010, 380.020, 380.030 and 380.480, RSMo 1949, are repealed and thirty new sections enacted in lieu thereof, to read as follows:"

Sections 380.010, 380.020 and 380.030, RSMo 1949, provided for the incorporation of County Mutual Insurance Companies. Section 27 of House Bill No. 249, supra, (Section 380.009, RSMo 1959) prohibited the formation of County Mutual Insurance Companies after August 29, 1953.

Section 380.480, RSMo 1949, provided for the incorporation of Farmers Mutual fire and lightning, tornado, windstorm and cyclone, and hail Insurance Companies. Section 28 of House Bill No. 249, supra, (Section 380.479, RSMo 1959) prohibited the formation of Farmers Mutual Insurance Companies pursuant to the provisions of Sections 380.480 to 380.570, RSMo 1949, after the effective date of the act.

Section 29 of House Bill No. 249 (Section 380.600, RSMo 1959) provides that County Mutual Insurance Companies and Farmers Mutual Insurance Companies previously organized may elect to come under the provisions of Sections 380.580 to 380.840, RSMo 1959, the 1953 Farmers Mutual Insurance Company Act.

The territories in which the old County and Farmers Mutual Insurance Companies are authorized to issue insurance are specifically provided for by the statutes. Section 380.110, RSMo 1959, limits a County Mutual Insurance Company to insuring property within the county in which such company is organized. Section 380.490, RSMo 1959, provides that a Farmers Mutual fire and lightning Insurance Company shall do business only in the county in which it is organized, in adjoining counties, and in counties in which a county line of said county is not more than one mile distant from the county line of the county in which said company is organized. Section 380.500, RSMo 1959, provides that a Farmers Mutual tornado, windstorm and cyclone Insurance Company shall do business only in the congressional district in which it is organized, and, after such company has \$400,000.00 worth of property insurance, throughout the State of Missouri. Section 380.510, RSMo 1959, provides that a Farmers Mutual hail Insurance Company may do business throughout the State of Missouri.

The incorporation of Farmers Mutual Insurance Companies under the 1953 act is provided for by Section 380.590, RSMo 1959. Insofar as the question under consideration is concerned, the following provisions from the cited statute are significant:

Honorable Robert D. Scharz

"Any number of persons, not less than one hundred, each owning insurable property in this state and within the territory in which they propose to operate * * * may form an incorporated farmers' mutual insurance company for the purpose of mutually insuring the members thereof * * * . * * * Such articles of incorporation shall set forth * * * the territory in which the company proposes to operate, the location of the principal or home office of the company which shall be within this state and within the territory in which the company operates, * * * . * * * Upon a showing of full compliance with all provisions of sections 380.580 to 380.840 * * * the superintendent of insurance shall approve same (articles of incorporation) and deliver to such persons a certificate of authority for the operation of such farmers' mutual insurance company. * * * "

The certificate of authority referred to in Section 380.590, RSMo 1959, is provided for by Section 375.010, RSMo Cum. Supp. 1965, which provides in part as follows:

"No company shall transact in this state any insurance business unless it shall first procure from the superintendent of the insurance division of this state a certificate * * * authorizing it to do business * * * ."

The kinds of insurance which a Farmers Mutual Insurance Company may make are set forth in Section 380.620, RSMo 1959, and are described by numbered paragraphs in the following categories: (1) Fire; (2) Windstorm; (3) Crops; and (4) Miscellaneous. Specific financial requirements to write the various kinds of insurance provided for by Section 380.620 are set forth in Section 380.630, RSMo 1959. Before making fire insurance policies a company must have 250 policy applications for at least \$500,000.00 net insurance at risk in not more than three adjoining counties. The territory may be increased to ten adjacent counties when the company has \$10,000,000.00 of net insurance at risk. The territory may be further increased to more than ten counties after the company has at least \$25,000,000.00 of net insurance at risk.

To make windstorm insurance, the requirements include at least 750 policy applications for at least \$2,000,000.00 net insurance at risk and not more than 10 per cent shall be in any one county. Thus, the statute contemplates policy applications in ten counties before the company commences business. It is further provided that a fire insurance company may issue policies for windstorm insurance if such a company has \$25,000,000.00 net insurance at risk, a safety fund of \$75,000.00 and operates in at least ten counties.

Honorable Robert D. Scharz

To make crops insurance the requirements include 400 policy applications covering crops for at least \$400,000.00 of net insurance at risk in not less than eight counties. It is further provided that for a crops insurance company to make insurance against earthquake, flood, rain, drouth, etc., a company shall have at least \$12,250,000.00 net crop insurance at risk in at least 45 counties.

To make miscellaneous insurance it is provided that a company shall have at least \$100,000,000.00 net insurance at risk under one or more categories of fire, windstorm, or crops insurance and a safety fund of at least \$200,000.00. It is further provided that a company may make miscellaneous insurance alone if it maintains the requirements in regard to liabilities, reserves and amount of surplus for safety funds as required of fire insurance companies operating under the general insurance laws of this state.

Section 380.700, RSMo 1959, provides in part as follows:

"Any person having a risk insurable * * * in the territory in which the company operates, may become a member of such company by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto. * * * "

Reference has been made to the many statutes which have some relevance to the question under consideration. The 1953 Farmers Mutual Insurance Company Act repealed the existing provisions for the incorporation of County and Farmers Mutual Insurance Companies. The new provisions for incorporation of Farmers Mutual Insurance Companies were enacted in lieu of the former provisions. The preamble to the act states that new sections **are** enacted relating to the same subject as the repealed sections. Therefore, the sections relating to the territory in which County and Farmers Mutual Insurance Companies are authorized to serve should be read together with the provisions concerning territory in the 1953 act in an attempt to arrive at the legislative intent. Statutes in pari materia should be construed together and compared with each other, and no portion of an act should be singled out for consideration apart from all legislation on the subject; Fleming v. Moore Bros. Realty Co., 251 S.W.2d 8, 1.c. 15.

In considering this question, this office has also been guided by the rules of statutory construction as adhered to in American Bridge Co. v. Smith, 179 S.W.2d 12, 1.c. 15 as follows:

"[4,5] 'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration.' Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S.W.2d 920, 925; Artophone Corporation v. Coale, 345 Mo. 344, 133 S.W.2d 343. * * * "

Honorable Robert D. Scharz

Applying the rules of statutory construction referred to above, it is noted that the insurance business of old County and Farmers Mutual Insurance Companies is restricted to the State of Missouri. It appears that one of the purposes of the new act was to provide a uniform code applicable to these companies. A review of the act does not reflect any express legislative intent to authorize such companies to extend their activities beyond the State of Missouri. The financial requirements for writing the various kinds of insurance authorized under the act reflect specific territorial restrictions to the State of Missouri. Fire, windstorm, crops and miscellaneous are the named categories of insurance which such companies may be authorized to make. The miscellaneous category is the only kind of insurance to which specific territorial limitations within the State of Missouri are not stated. However, it appears to this office that the provisions in regard to miscellaneous insurance when considered together in the same section with the provisions in regard to the other categories of insurance give rise to the clear implication that the territorial authorization for such insurance business is limited to the State of Missouri.

Furthermore, as required by Section 380.590, RSMo 1959, the proposed articles of incorporation of such a company must set forth, among other things, the territory in which the company proposes to operate. The proposed articles of incorporation are subject to approval, a certificate of authority is issued to the corporation. Such certificate of authority, issued pursuant to Section 375.010, RSMo Cum. Supp. 1965, authorizes a company to transact insurance business in this state. The Superintendent of Insurance has no power to issue a certificate of authority to a company to transact business outside the state of Missouri. It appears to this office that the Superintendent of Insurance is without authority to approve articles of incorporation which set forth territory to be served beyond the state of Missouri.

Other insurance companies organized in the state of Missouri are not restricted to the state of Missouri in the transaction of an insurance business. Such companies may not organize until the charters of such companies have been approved by the Superintendent of Insurance. However, the statutory provisions for the organization of such companies do not require that the charter set forth the territory in which such companies shall transact business. See life and accident stock insurance companies; Section 376.060, RSMo 1959; life and accident mutual insurance companies, Section 376.100, RSMo 1959; life and accident stock and mutual companies, Section 376.150, RSMo 1959; industrial and prudential insurance companies, Section 376.710, RSMo 1959; insurance other than life, stock companies, Section 379.035, RSMo 1959; mutual, fire and marine companies, Section 379.060, RSMo 1959; mutual companies other than life and fire, Section 379.210, RSMo 1959; reorganized insurance companies,

Honorable Robert D. Scharz

Sections 379.520 and 379.525, RSMo 1959; and special charter companies accepting the general insurance laws, Sections 379.590 and 379.595.

Memoranda which have been submitted to this office in support of the contention that companies organized under the 1953 Farmers Mutual Insurance Company Act can do business beyond the state of Missouri have been carefully considered. It has been pointed out that the only territorial restrictions in the act are found in Section 380.630 which detail the financial requirements imposed upon companies to transact the various kinds of insurance business. The section imposes no territorial restrictions in regard to the kinds of insurance categorized as "miscellaneous". By reason of the maxim "expressio unius est exclusio alterius" it is agreed that companies authorized to transact miscellaneous insurance are not limited territorially to the state of Missouri. This opinion has concluded above that the provisions applicable to old County and Farmers Mutual Insurance Companies and the provisions of the 1953 Farmers Mutual Insurance Company Act, when considered and construed together, clearly imply that Farmers Mutual Insurance Companies are restricted in transacting business to the state of Missouri.

Kansas Home Insurance Company v. Wilder, 43 Kan. 731, 23 Pac. 1061 (1890), is cited in support of the argument that the only territorial restrictions are those recited in the provisions applicable to financial requirements. In the cited case, the court held that the company in question could not insure property beyond the limits of the state of Kansas because the company did not maintain a guaranty fund which was required by statute for companies to do business outside of Kansas. However, many other factors entered into and supported the decision. The court noted as follows, 23 Pac. 1.c. 1063:

" * * * The company is organized under chapter 132 of the Laws of 1885, and an examination of the provisions of that act, and the other statutes relating to mutual fire insurance companies leads us to the opinion that the legislature intended to confine the business of mutual fire insurance companies of the class to which the plaintiff belongs to the transaction of business within the state. * * * "

The Court concluded as follows:

" * * * While the language employed is not as explicit and clear as it might have been, and the proposition under consideration not wholly free from doubt, yet, when all the provisions of the legislature relative to mutual fire insurance companies are read together, it is reasonably clear that the legislature intended that such companies as have no guaranty fund can issue policies only on property situate in Kansas. * * * "

Honorable Robert D. Scharz

Therefore, it appears to this office that the conclusion being reached by this opinion has some support in the cited case.

It is further contended that authority to serve territory beyond the state of Missouri is implied in Section 380.590. The cited section provides among other things, that persons forming such a company must own property " * * * in this state and within the territory in which they propose to operate * * * " and that the location of the principal office " * * * shall be within this state and within the territory in which the company operates * * * ." It is argued that the references above to "in this state" are superfluous and redundant if such companies cannot lawfully operate beyond the state of Missouri. State v. Ralston-Purina Co. 358 S.W.2d 772, is cited in support of the proposition that effect must be given, if possible, to every part of the statute, including every word, phrase and sentence. The rule of construction is stated by the court as follows, l.c. 777:

"[1] We agree with the Court of Appeals, as stated at 343 S.W.2d 638 [3, 4], that the basic rule of statutory construction here applicable is that the court 'are to seek the intention of the lawmakers and to do so from the words used, if possible; ascribing to the language used its plain and rational meaning and giving significance and effect to every word, phrase, sentence and part thereof, if in keeping with that intent.' * * * " (Emphasis added)

It is the view of this office that the conclusion being reached gives plain and rational meaning to the language used and that to give special significance to the words "in this state" so as to enlarge the later reference to "territory" as suggested would not be in keeping with the legislative intent as gathered from the entire act and related statutes on the same subject.

CONCLUSION

It is the opinion of this office that Farmers Mutual Insurance Companies organized under Sections 380.480 to 380.570, RSMo, may not be authorized by the Superintendent of Insurance to do an insurance business outside the state of Missouri. It is the further opinion of this office that any County Mutual Insurance Company operating under the provisions of Sections 380.040 to 380.270, RSMo, or any Farmers Mutual Insurance Company operating under the provisions of Sections 380.481 to 380.570, RSMo, which elects to come under the provisions

Honorable Robert D. Scharz

of Sections 380.580 to 380.840, RSMo, may not be authorized by the Superintendent of Insurance to do an insurance business outside the state of Missouri.

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

Very truly yours,


NORMAN H. ANDERSON
Attorney General