

INSURANCE:
FARMERS MUTUAL INSURANCE
COMPANY:

A farmers mutual insurance company is a private commercial enterprise and may not be permitted to occupy office space in the county courthouse for the conduct of its business.

OPINION NO. 150

April 28, 1971

Honorable Ralph W. Gilchrist
Prosecuting Attorney
Polk County Courthouse
Bolivar, Missouri 65613



Dear Mr. Gilchrist:

This is in response to your request for an opinion on the question whether a farmers mutual insurance company may be allowed to occupy office space in the county courthouse from which it would conduct its business.

As indicated in the Opinion of the Attorney General No. 15, Carr, 2-23-55, to which you refer, a copy of which we enclose, a county court may not lawfully permit the usage of public property in the form of office space in a county courthouse for the conduct of a private commercial enterprise. To answer your question, then, we must consider whether a farmers mutual insurance company is a public corporation or a private commercial enterprise.

The difference between a public and private corporation was pointed out by the Supreme Court of the United States in the case of *The Trustees of Dartmouth College v. Woodward*, 4 L.Ed. 629, 668 (1819) as follows:

"Another division of corporations is into public and private. Public corporations are generally esteemed such as exist for public political purposes only, such as towns, cities, parishes, and counties; and in many respects they are so, although they involve some private interests; but strictly speaking, public corporations are such only as are founded by the government for public purposes, where the whole interests belong also to the government. If, therefore, the foundation be private, though under the charter of the government, the corporation is private, however extensive the uses

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may be to which it is devoted, either by the bounty of the founder or the nature and objects of the institution. For instance, a bank created by the government for its own uses, whose stock is exclusively owned by the government, is, in the strictest sense, a public corporation. So a hospital created and endowed by the government for general charity. But a bank, whose stock is owned by private persons, is a private corporation, although it is erected by the government, and its objects and operations partake of a public nature. The same doctrine may be affirmed of insurance, canal, bridge, and turnpike companies. In all these cases, the uses may, in a certain sense, be called public, but the corporations are private; as much so, indeed, as if the franchises were vested in a single person."

The Supreme Court of Missouri has distinguished public financial institutions from private corporations. In *Jasper County Farm Bureau v. Jasper County*, 286 S.W. 381, 384 (Mo. 1926), the court stated:

"Nor are the appropriations provided for under the Farm Bureau Act gifts or grants of public money to private associations or societies, but are rather appropriations in payment for expenditures in carrying out the work of a public county institution. It is true the institution is in the form of a society or association, but the society or association is a public county institution, for the Farm Bureau Act makes it such by providing that the association or society make monthly and annual reports to the county court. . . ."

The Supreme Court recognized a private corporation in *Ruggeri v. City of St. Louis*, 429 S.W.2d 765, 768-769 (Mo. 1968) as follows:

"There is no question that the Convention and Tourist Board of Greater St. Louis is a non-profit association created for benevolent purposes by pro forma decree of incorporation. Its creation, status, and purposes do not in any way relate or connect with the municipal government of the City of St. Louis or any of its divisions. Irrespective of its worthwhile

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purposes and activities, and while its objects may be in a certain sense public, such a corporation, as distinguished from uses or objects, is private. State ex rel. Board of Control v. City of St. Louis, supra, 115 S.W. 1.c. 545. In Ketchie v. Hedrick, 186 N.C. 392, 119 S.E. 767, 31 A.L.R. 491, 494, an ordinance authorized payment of public funds to a chamber of commerce to be expended by it for purposes of bringing industry to High Point. In declaring the ordinance unconstitutional, the rationale for denying nongovernmental bodies the authority to receive and expend public funds was expressed: 'We know of no reason why the expenses and purposes of a nongovernmental body like a chamber of commerce should become necessary expenses of government. * * * they are actuated by patriotic motives to advance the public good. But they are in no sense governmental. They are neither elected nor appointed by public authority. They exercise no governmental duty. * *' . . ."

In the light of these judicial definitions, we must consider whether the statutes authorizing the formation of a farmers mutual insurance company constitutes such a company, a private corporation or a public institution of the county.

The legislature has enacted comprehensive statutory provisions covering the entire field of insurance. In 1953 it provided in Section 380.479, RSMo 1969, that "No farmers' mutual insurance company shall hereafter be organized or incorporated under the provisions of sections 380.481 to 380.570, but nothing in this section shall be construed as restricting or abridging in any manner the right of any farmers' mutual insurance company now incorporated and licensed to do business in this state from continuing to do business under the provisions of sections 380.481 to 380.570. . . ." The procedure for the incorporation of farmers mutual insurance companies now is set forth in Section 380.590, RSMo 1969, which provides in part as follows:

"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 of an insurable value of at least two thousand five hundred dollars, by complying with the provisions of sections 380.580 to 380.840 may form an incorporated

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farmers' mutual insurance company for the purpose of mutually insuring the members thereof as herein provided. . . ."

It is apparent that a farmers mutual insurance company formed for the purpose of mutually insuring the members thereof is a private corporation rather than a public institution of the county.

CONCLUSION

It is, therefore, the opinion of this office that a farmers mutual insurance company is a private commercial enterprise and may not be permitted to occupy office space in the county courthouse for the conduct of its business.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 15
2-23-55, Carr