WORKMEN'S COMPENSATION INSURANCE:

Employers under the Workmen's Compensation Act must pay the total cost of insurance covering their liability to their employees. The employee is prohibited, by the Compensation Act of this State, from paying any part of such cost of insurance.

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September 3, 1953

Honorable Robert E. Crist
Prosecuting Attorney
Shelby County
Shelbina, Missouri

Dear Mr. Crist:

This will be in reply to your letter requesting the opinion of this office whether the County Court of Shelby County may lawfully pay half of the insurance premiums and the employees of the county pay the other half of the cost of such premiums if the county elects to accept the provisions of the Workmen's Compensation Act as an employer and the county procures insurance covering its liability to its employees under the Act.

Your letter, requesting the opinion, reads as follows:

> "Our County Court desires to take out workmen's compensation on its laboring personnel. Our Court further proposes to pay one-half of the insurance premiums and the employees are to pay the other one-half. Is such action permissible?
>
> "If it is not permissible for the County Court to pay one-half of the insurance premiums and the employees to pay the other one-half, would it be all right for the County Court to pay all of the premium? Would it make any difference if the employees agreed in writing to pay one-half of the insurance premiums?"

Section 287.030, V.A.M.S., 1949, provides that with other political subdivisions of this State counties may elect to accept the chapter on workmen's compensation as an employer, and if and when such election is made any county in this State is an employer like any other employer as defined in said section. We are enclosing a copy of the opinion of this office dated February 7, 1950, holding that under the terms

of Section 3693, R.S. Mo. 1939, counties could elect to accept the terms of the Compensation Act respecting their employees.

The Workmen's Compensation Act of this State provides that the procuring of insurance by the employer to cover liability of the employer to his employees, if both have accepted the Act, is compulsory. This requirement is contained in Section 287.280, Vernon's Annotated Missouri Statutes, 1949, which reads as follows:

> "Employer must carry insurance--failure--compensation commuted--exception. Every employer electing to accept the provisions of this chapter, shall insure his entire liability thereunder except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer may himself carry the whole or any part of such liability without insurance upon satisfying the commission of his ability so to do. If the employer fail to comply with this section, an injured employee or his dependents may elect after the injury to recover from the employer as though he had rejected this chapter, or to recover under this chapter with the compensation payments commuted and immediately payable. If the employer be carrying his own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the commission shall require the employer to furnish security for the payment of the compensation, and if not given, all other compensation shall be commuted and become immediately payable; provided, that employers engaged in the mining business shall be required to insure only their liability hereunder to the extent of the equivalent of the maximum liability under this chapter for ten deaths in any one accident, but such employer may carry his own risk for any excess liability."

The Act further provides, in plain and brief terms, that the employee shall not pay any part of such insurance cost. That prohibitory provision constitutes Section 287.290 of said Act, which states:

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> "Employee not to pay cost of insurance. No part of the cost of such insurance shall be assessed against, collected from or paid by any employee."

Said Section 287.290 uses the phrase "such insurance", and manifestly its terms are intended to be and are of the essence of the requirement of insurance under the said Section, 287.280. This, it is plain, we believe, was the intention of the Legislature in the enactment of both of said sections. The rules of construction of the meaning of statutes, adopted and followed by the text writers and the Appellate Courts of this State, provide that if a section of the statutes providing the method of doing an act, or prohibiting the doing of an act, is of the essence and substance of the matter involved, then the statute is mandatory.

59 Corpus Juris, pp. 1074, 1075, states the following text on this question, to-wit:

> "* * * But a provision relating to the essence of the thing to be done, that is, to matters of substance, is mandatory, and when a fair interpretation of a statute, which directs acts or proceedings to be done in a certain way, shows that the legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, or when some antecedent and prerequisite conditions must exist prior to the exercise of power, or must be performed before certain other powers can be exercised, then the statute must be regarded as mandatory. So it has been held that, where a statute is founded on public policy, those to whom it applies should not be permitted to waive its provisions."

The Appellate Courts of this State have consistently followed that rule in their decisions. That question was before the Supreme Court of this State in the case of State ex rel. Ellis vs. Brown, 33 S.W. (2d) 104. The Court, following the rule, quoted 25 R.C.L., Section 14, pp. 766, 767, and in approval, l.c. 107, said:

> "'A mandatory provision is one the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding. Directory provisions are not intended by the legislature to be disregarded, but where the consequences

> of not obeying them in every particular are not prescribed the courts must judicially determine them. There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished. Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while the provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory.'"

There are many decisions by our Supreme Court and our Courts of Appeals adhering in like terms to the application of this rule of construction. We deem it sufficient here to quote only the case and text cited above.

It appears clear, we believe, from the terms of the statutes cited and quoted, and from the decisions construing such provisions as being of the essence and the substance of a matter such as providing insurance by employers under the Workmen's Compensation Act, that employers under the Act must pay the entire cost of procuring such insurance, and that the provisions of both of such sections hereinabove quoted are mandatory.

CONCLUSION

It is, therefore, the opinion of this office that it is not permissible for the County Court of your county, if it elects to accept the provisions of the Workmen's Compensation Act of this State, to pay one-half of the cost of insurance required by the Act and its employees pay the other half of the cost of such insurance. By the terms of the two sections of the Compensation Act noted the county is required to pay all of

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the cost of such insurance and the employees of the county are not permitted to pay any part of the cost of such insurance. Every person involved is prohibited, by the terms of said Section 287.290, from requiring the payment or receiving any part of the payment of such cost from the employees, and employees are prohibited, by the terms of said section, from paying any part of the cost thereof, even if they consented to do so.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

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