Supplemental attached

MUNICIPALITIES
CITIES
INSURANCE : City does not have authority to insure its property in reciprocal or inter-insurance exchanges where the liability of the city under the policy is contingent or unlimited.

4-28

April 20, 1934

FILED
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Honorable W. W. Graves
Prosecuting Attorney Jackson County
Kansas City
Missouri

Dear Mr. Graves:

Receipt of your letter dated February 28,1934 is acknowledged, in which you inquire:

> "Can a state, or a political subdivision of a state, such as a city, county, school district, etc., protect its properties from loss by fire or other casualty through the medium of reciprocal or inter-insurance exchanges."

Section 47 of Article IV of the Constitution of the State of Missouri, in part, is as follows:

> "The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State, * * * to lend its credit * * * to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company * * *."

In Cooley's Briefs on Insurance (2nd Ed.) Volume I, page 70, in reference to reciprocal or inter-insurance associations it is stated:

"Somewhat similar to Lloyd's associations, but differing in many respects, are the reciprocal or inter-insurance associations that have come into existence in recent years. Like Lloyd's associations, they are unincorporated or voluntary associations, organized for a scheme of mutual insurance. As defined by a writer in 58 Central Law Journal, p. 323, the term 'inter-insurance' is applied to 'that system of insurance whereby several individuals, partnerships, and corporations underwrite each other's risks against loss by fire or other hazard, through an attorney in fact, common to all, under an agreement that each underwriter acts separately, and severally, and not jointly with any other.' "

And again on page 72,

"Under the inter-insurance system of insurance, each member is liable for his proportionate share of the insurance granted by policy, and a member sustaining a loss could proceed in a single chancery suit to secure a decree for the aggregate liability of the subscribers and to fix the separate liability of each subscriber, or could proceed in an action at law against the combined members, the method of enforcing the liability being but a procedural matter, over which the Legislature of each state has control within the constitutional limit against impairing the validity of contract (Thomas Canning Co. v. Canners' Exch. Subscribers at Warner Inter-Insurance Bureau, 219 Mich. 214, 189 N. W. 214)."

Section 5966 Revised Statutes Missouri 1929, authorizing statutory reciprocal or inter-insurance contracts, provides:

> "Individuals, partnerships and corporations of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance."

Section 5967 provides that such contracts of reciprocal or inter-insurance may be executed by an attorney in fact designated for that purpose.

Section 5970 reads:

> "There shall be filed with the superintendent of insurance of this state, by such attorney, a statement under the oath of such attorney, showing in the case of fire insurance, the maximum amount of indemnity upon any single risk and such attorney shall whenever and as often as the same shall be required, file with the superintendent of insurance a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers and that from such examination or from other information in his possession, it appears that no subscriber has assumed on any single fire insurance risk an amount greater than ten per centum of the net worth of such subscriber."

Section 5971, in part, provides:

> "There shall be maintained at all times assets in cash or securities authorized by the laws of the state in which the principal office of the attorney is located for the investment of similar funds (of) insurance companies doing the same kind of business, in amount equal to fifty per centum of the net annual advance premiums or deposits collected and credited to the accounts of subscribers on policies having one year or less to run and pro rata on those for longer periods; or, in lieu thereof, one hundred per centum of the net unearned premiums or deposits collected and credited to the accounts of subscribers. Said assets shall not be charged as a liability. * * * * * *
> * * * * * * * * * * * * * * * * * * * *
> If at any time the amounts on hand are less than the foregoing requirements, the subscribers or their attorney for them shall make up the deficiency: Provided, however, that the guaranty fund or surplus requirements of this section, shall not apply to exchanges which are licensed on or before the date when this section shall become effective until January 1, 1923."

What is undoubtedly meant by Section 5971 is that if the specific and certain funds required to be maintained at any time fall below the required amount, then the subscribers to such reciprocal or inter-insurance exchange may be required to contribute the deficiency, so that under the statutory scheme for reciprocal and inter-insurance the liabilities of the subscribers among themselves are at all times contingent and the amount of such liabilities to be determined according to such hazards as may be incurred and such losses as may occur.

The case of School District v. Twin Falls County Mutual Fire Insurance Company, 164 Pac. 1174, denied recovery on a policy issued by a mutual fire insurance company to a school district. The Constitution of the State of Idaho contains substantially the same provision as the provision in the Constitution of Missouri above set out. The

court holds that the liability imposed by becoming a member of a mutual insurance company amounts to the loaning of the credit of the district in aid of a private enterprise, and also that the contract entered into by means of the policy might violate the Constitution of the State of Idaho prohibiting a school district from incurring indebtedness except as in the Constitution provided. The court at page 1174 of the opinion said:

> "In the case of Atkinson v. Board of Commissioners, 18 Idaho, 282, 100 Pac. 1046, 28 L. R. A. (N. S.) 412, this court, speaking of sections 2 and 4 of article 8 of the Constitution, said:
>
> Section 2 prohibits the state in any manner ever becoming interested with any individual, association, or corporation in any business enterprise, and it likewise prohibits the state in any manner loaning its credit to the aid of such an enterprise or becoming a stockholder therein; While section 4 makes substantially the same prohibition against any county, city, town, township, board of education, school district or other subdivision of the county or state, ever lending its credit, either directly or indirectly, to any business enterprise in aid of any individual, association, or corporation, Section 4 of article 12 reiterates substantially the same thing with reference to counties and municipal corporations as is provided against in section 4 of article 8. Section 4 of article 15, however, specifically authorizes cities and towns to contract indebtedness for 'school, water, sanitary, and illuminating purposes,' thereby excluding all other purposes not governmental in their character."
>
> (2,3) The sections of the Constitution referred to are self-operative. They are intended to prevent any county, city, town, or other municipal corporation from lending credit to or becoming interested in any private enterprise or from using funds derived by taxation in aid of any private enterprise, with the exceptions provided for in section 4 of article 12."

We are not here discussing whether or not there could be recovery on a policy issued by such an exchange to a city or other municipality, but we are only discussing the initial right of such municipality to enter into such a contract.

In the case of Sergeant v. Goldsmith Dry Goods Company 10 A. L. R. 742, the Supreme Court of Texas had under consideration the question of the validity of the right to recover on an insurance contract which was essentially a reciprocal or an inter-insurance policy. The court held that the liability of the subscribers to the exchange was limited by the terms of the application for the insurance and that such liability was limited to fixed and stated premiums and a recovery could not be had beyond that amount.

We are of the opinion that a municipality of this state is without authority to insure its property by entering into reciprocal or inter-insurance contracts as those terms are above defined, with an unlimited or contingent liability thereunder, but that such a municipality can only enter into an insurance contract where its liability under the policy is fixed and determined by the contract to stated premiums to be paid by it for such insurance protection.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC