MUTUAL INSURANCE COMPANIES: 1) Mutual Insurance Companies organized under Art. 7, Chap. 37, R.S. Mo. 1939, are not subject to general laws governing stock insurance companies, including statutes vesting in the State Department of Insurance regulation over rates charged by stock companies, and, 2) Mutual Insurance Companies organized under said Art. 7, Chap. 37, may issue a non-assessable policy if such company has a surplus guarantee fund of at least $100,000.00.

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December 27, 1945

Honorable Owen G. Jackson
Superintendent of Insurance
of Missouri
Jefferson City, Missouri

Dear Superintendent Jackson:

Your letter of recent date, requesting an opinion from this Department, has been received.

Your letter submits two questions to be answered in the opinion:

First: "(a) Whether a mutual insurance company, organized under the provisions of Article 7, Chapter 37, is subject to the provisions of Article 8, Chapter 37, vesting in the State Department of Insurance certain regulation and control over rates charged for specified types of insurance; and

Second: "(b) Whether a mutual insurance company, organized under Article 7, Chapter 37, may issue a so-called non-assessable policy if such company has a surplus of at least $100,000.00."

Section 5971, Article 8, Chapter 37, R.S. Mo. 1939, provides that insurance companies doing a fire, lightning, or hail or windstorm insurance business in this State shall maintain a public rating record as an incident to the publicity and the regulation of the fairness of rates charged by such insurance companies. That part of said Section 5971, so providing, is as follows:

"Every fire insurance company or other insurer authorized to effect

> insurance against the risk of loss by fire, lightning, hail or windstorm shall maintain a public rating record from which the rate of premium applicable to each risk in this state to be written by such company or other insurer may be ascertained in advance of the making of insurance thereon. * * * ".

Section 5967, of said Article 7, Chapter 37, exempts mutaul insurance companies organized under said Article 7 from all other general laws governing insurance in this State. Said Section 5967, so providing, is as follows:

> "This article to govern. Except as provided herein, or as such companies may be hereafter expressly designated in any other law, insurance companies organized or admitted to do business in this state under this article shall not be subject to any other law of this state governing insurance companies. (R.S. 1929, Sec. 5856.)"

Section 5967, exempting or excepting mutual insurance companies organized under Article 7, Chapter 37, R.S. Mo. 1939, was enacted at the 1919 session of our Legislature, Laws 1919, page 397. Article 8, Chapter 37, R.S. Mo. 1939, including Section 5971, was in existence at the time Section 5967 was enacted. Section 5967 states that mutual insurance companies organized under said Article 7, shall be exempt from general insurance laws unless expressly designated in such other law as coming within its terms. There is no express provision contained in said Article 8, Chapter 37, making mutual insurance companies organized under said Article 7, Chapter 37, subject to the terms of said Article 8, respecting rates or the filing and maintenance of a public rating record in the office of the Superintendent of Insurance. It would thus appear that the positive terms of said Section 5967, exempting mutual companies from general insurance laws, would be conclusive, in the absence of any express terms of any other law bringing them under its terms, that mutual insurance companies are not subject to the rating regulations as set forth in said Article 8. Mutual companies make among their members all conditions and agreements contained in their policies.

Stock companies create and fix in an ex-parte contract in the first instance, all of the terms and conditions of the policies, as well as the premium which the buyer must pay under the rates they promulgate. The policy buyer may take it or leave it. It is not the contract of the policy buyer until he agrees to all of the conditions, provisions, and rates fixed by stock insurance companies. He has no voice in any of its terms or conditions nor the making of the rates which control the premiums he must pay for the protection. The two plans, mutual on the one hand, and stock insurance on the other hand, are entirely different and opposed to one another in principle and practice. The statutes governing each plan of insurance are necessarily separate and different. This, we believe, was the reasoning adopted by the Legislature in enacting such exemption statutes.

Mutual insurance is defined in 32 C.J., page 1018, very aptly as follows:

> "Mutual insurance is that system of insurance by which the members of the association or company mutually insure each other. It is that form of insurance in which each person insured becomes a member of the company, and members reciprocally engage to indemnify each other against losses, any loss being met by an assessment laid on all members. * * * ".

Our Supreme Court in the case of State vs. Mfgr's. Mutual Insurance Co., 91 Mo. 311, l.c. 318, of mutual insurance business, said the following:

> "* * * The theory of mutual insurance, as generally understood, is, that the premiums paid, or to be paid, by the members for their insurance, constitute a fund for the liquidation of losses. It is not essential that the premiums should be paid by note. They may be paid in cash, and when so paid the cash stands for the note. The policy is still a mutual policy, and the holder thereof a member of the association. * * * ".

Mutual insurance as thus defined in the above quoted citations becomes a reciprocal, mutual agreement between persons whereby the insured becomes the insurer in each policy of insurance.

Stock insurance rates are fixed solely by the companies themselves. Hence the necessity for the enactment of said Section 5971 and other sections of Article 8, Chapter 37, R.S. Mo. 1939, to supervise rates of stock companies.

In the case of Pfiester vs. Missouri State Life Insurance Company, which was before the Supreme Court of Kansas, reported in 116 Pacific Reporter, 245, l.c. 247, the Court, concerning the policies written by the companies, had this to say:

> "* * * Few persons solicited to take policies understand the subject of insurance or the rules of law governing the negotiations, and they have no voice in dictating the terms of what is called the contract. * * * ".

The above cited case was a life insurance case, it is true, but the same facts exist and the same rule of law applies in the making of rates exclusively by stock insurance companies, other than life, as applied in and which were being considered by the Court in the Kansas case.

It would seem then that there would not only be no just reason for mutual insurance to be subject to the terms of the rating statutes requiring them to keep a rating record, as is provided in said Section 5971, but it would result in hardship and confusion if they were required to keep a rating record, and comply with other general insurance laws which have nothing in common with and are not responsive to the mutual plan of insurance.

There are a number of sections of our statutes exempting other mutual insurance companies from the general insurance laws of the State. One of such is Section 6186, R.S. Mo. 1939, which in part, is as follows:

> "Hereafter all town mutual fire and lightning, tornado, windstorm or cyclone insurance companies organized for the sole purpose of mutually insuring the property of its members against any loss incurred by them from fire, lightning or windstorm, as may be provided by its constitution and by-laws, and not inconsistent with the provisions of this article, shall be exempt from all laws of the state of Missouri governing other insurance companies: * * * ".

Chapter 14, Article 37, R.S. Mo. 1939, deals with County Mutual Insurance Companies. Section 6175, exempting such companies from general insurance laws, is as follows:

> "All companies incorporated under the provisions of this article are hereby exempted from the operation of all other general statutes of this state in regard to insurance, but such companies shall be subject, as far as applicable, to the provisions of article 1, chapter 33, R.S. 1939. (R.S. 1929, sec. 6055.)"

There are still other such statutes in this State so exempting other kinds of mutual insurance companies from general insurance laws, but we believe those above quoted will be sufficient to clearly indicate that the intention of the Legislature has always been to exempt all mutual and fraternal companies from all general insurance laws of the State, and to make them subject only to the laws governing such companies in the article of the chapter under which they are organized. Our Supreme Court has so declared in the case of Westerman vs. Lodge, 196 Mo. 670. This was a case where the question arose whether the provisions of the non-forfeiture insurance statute, Section 7897, R.S. Mo. 1899, applied to fraternal beneficiary insurance companies. The Supreme Court held that it did not. The Court held that fraternal beneficiary insurance companies were exempt from all general insurance laws of this State. The Court in so holding, l.c. 731, said:

> "No one can read the numerous acts

> of the Legislature from the time fraternal beneficiary associations were authorized to do business in this State without being convinced beyond question that it has ever been the policy of this State to exempt such associations from the general insurance laws applicable to regular or old-line insurance. * * * ".

This holding would apply to mutual insurance companies, we think, with like effect as it was then applied to fraternal companies.

We believe the language of said Section 5967, is so clear and direct that it was without doubt the intention of the Legislature to exempt, absolutely, mutual insurance companies from the operation of all general insurance laws of this State, including the terms of said Section 5971, supra. This answers your first question.

Proceeding to your second question:

> "(b) Whether a mutual insurance company, organized under Article 7, Chapter 37, may issue a so-called non-assessable policy if such company has a surplus of at least $100,000.00."

The basis and authority upon which non-assessable policies may be issued by mutual insurance companies organized under Article 7, Chapter 37, R. S. Mo. 1939, are contained in Section 5959 of said Article and Chapter. That Section is as follows:

> "The maximum premium payable by any member shall be expressed in the policy or in the application for the insurance. Such maximum premium may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus of at least one hundred thousand dollars or a surplus which is not less in amount

> than the capital stock required of domestic stock insurance companies transacting the same kinds of insurance. "

The question is whether mutual insurance companies organized under said Article 7, may issue non-assessable policies, that is to say, a policy where the premium is paid in cash without an additional contingent premium if the company has established and maintains a guarantee fund of $100,000.00 without any other conditions respecting the amount of the guarantee fund.

The fundamental rule of the construction of any statute is to arrive at and give effect to the intention of the Legislature in passing a statute. 59 C.J., page 948, states it like this:

> "As the intention of the legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the court shall, * * * * give effect, * * * to the intention or purpose of the legislature as expressed in the statute. * * * ".

In one of the many decisions by our Supreme Court announcing the same rule of construction is the case of State ex rel. Koeln vs. Telephone Co., 316 Mo. 1008, l.c. 1012, where our Supreme Court said:

> "* * * While it is true that the intention of the Legislature must control in the interpretation of a statute, that intention must be gathered from the language which they use in the act. * * * ".

In arriving at the intention of the Legislature in enacting said Section 5959, we may take into consideration what the Legislature had in mind in expressing its intention in said Section 5959, by what it said in Section 5919 of Article 6. Said Article 6, deals with mutual insurance companies. Said Section 5919 of said Article 6, is in part, as follows:

> "No company formed upon the mutual plan for the purpose of doing the fire and marine business designated in the first of the three classes of insurance named in section 5904 shall, unless the company is to be formed with a guarantee fund, commence to do business until agreements have been entered into for insurance with at least two hundred applicants, the premiums on which shall amount to not less than one hundred thousand dollars, * * * ".

If said Section 5919 in outright terms permits mutual insurance companies organized under said Article 6, to commence and carry on business with a guaranty fund of $100,000.00, we believe we may take that Section for an example of the intention of the Legislature in the terms used in said Section 5959 that a mutual insurance company organized under said Article 7, should also exercise the same privilege of beginning and transacting business with a reserve or guarantee fund of $100,000.00.

The terms of said Section 5959, are in the alternative. It would seem that said Section could only reasonably be construed as giving a mutual company the right of transacting its business in the first instance, by accepting cash premiums without any additional contingent premium if such company had and maintains a reserve of $100,000.00, or if in the alternative, such company desired to maintain a reserve as a matter of competition with stock companies, equal to the capital stock of a domestic stock insurance company in the amount of $200,000.00 as a selling inducement in its business, it would have the right to increase its reserve to the amount of $200,000.00. But that such company is not compelled to maintain a reserve equal to the capital stock in the sum of $200,000.00 unless it wishes to do so. The Legislature uses the disjunctive particle "or". Surely it may not be reasonably said that the disjunctive "or" as used in said Section 5959 may be converted into the conjunctive "and". This would require the two-fold maintenance of a reserve of both $100,000.00 and a surplus of $200,000.00, the capital stock required of domestic stock insurance companies transacting the same kinds of business. We do not

believe the Legislature intended anything of the kind. We believe they intended that such mutual companies, organized under said Article 7, may maintain a surplus of $100,000.00 as a basis of issuing non-assessable policies, or if it chooses, it has the privilege of maintaining a surplus of $200,000.00 for the same purpose.

Webster's International Dictionary, page 1712, defines "or" as: "A co-ordinating particle that marks an alternative; as you may read or may write, -- that is, you may do one of the things at your pleasure, but not both."

Our Supreme Court in the case of Jones vs. Railroad Co., 178 Mo. 528, l.c. 539, defining the meaning of the word "or", and stating the interpretation to be put upon its use states the following:

> "* * * The word 'or' which the pleader has here used, may be used in two forms. In one it corresponds to either, and in that sense the term 'proper or necessary,' that is, one or the other, * * * ".

Authorities outside the State of Missouri also adopt the same construction of the use of the word "or" as given to it by our Supreme Court. The Supreme Court of the State of Florida in the case of Cherry Lake Farms vs. Love, 176 So. Rep. 486, l.c. 488, states the following:

> "In construing the language used in section 3223, R.G.S., section 5029, C.G.L., this court in the case of Pompano Horse Club, Inc., et al. v. State ex rel. Bryan, 93 Fla. 415, 111 So. 801, 805, 52 A.L.R. 51, said:
>
> "'The statute provides that "the state's attorney, county solicitor, county prosecutor, or any citizen of the county through any attorney he may select, may maintain his action," etc.
>
> "'In its elementary sense the word "or" is a disjunctive particle that

> marks an alternative, generally corresponding to "either," as "either this or that"; a connective that marks an alternative. * * * ".

The Illinois Court of Appeals in the case of Field vs. Freed, 191 Ill. App. Rep. 619, l.c. 623, 624, gave its construction of the meaning of the word "or" by saying:

> "It will be noted that the clause 'at the election of the plaintiff,' which is contained in the section of the Justices' Act that was under consideration in the case cited, is not found in section 4 of chapter 77, or elsewhere in that chapter, which relates to judgments and executions in courts of record. Nevertheless, the word 'or,' even without that clause, imports a choice between two alternatives. As ordinarily used, it means 'one or the other of two, but not both.' * * * ".

We believe the brief supplied to your office by Mr. Sappington correctly points out the proper legal principles applying here in the construction of said Section 5959. We believe his comments are meritorious, and that he correctly interprets the meaning of said Section. We take the liberty of quoting here some of his comments as follows:

> "* * * The statute is so written that the clauses describing the amount of surplus are independent of each other, and either could have been placed first in order in the statute and the meaning would have been the same.
>
> "Furthermore, the surplus required of domestic stock insurance companies

> was at the time of the enactment of the statute the sum of $200,000.00, and therefore a holding that that is the amount of surplus which must be held by a mutual company before issuing so-called nonassessable policies would give to the clause 'a surplus of at least $100,000.00' no meaning at all."

We believe, considering the above cited and quoted authorities, that said Section 5959, permits the issuance of non-assessable policies by companies organized under said Article 7, provided it has either a surplus of at least $100,000.00, or if they so desire, may in the alternative, provide a surplus which is not less in amount than the capital stock required of domestic stock insurance companies transacting the same kind of insurance, which, in that event, would be $200,000.00.

CONCLUSION.

It is, therefore, the opinion of this Department that:

a) Mutual insurance companies organized under the provisions of Article 7, Chapter 37, R.S. Mo. 1939, are not subject to the provisions of Article 8, Chapter 37, R.S. Mo. 1939, vesting in the State Department of Insurance regulation and control over rates charged for specific types of insurance; and

b) That mutual insurance companies organized under Article 7, Chapter 37, R.S. Mo. 1939, may issue a so-called non-assessable policy if such companies have a surplus of at least $100,000.00.

APPROVED:

J. E. TAYLOR
Attorney General

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

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