INSURANCE: $100,000.00 limitation in subparagraph (d) of Section 375.330, RSMo 1949, applicable to insurance company's right to purchase, hold and convey real estate is applicable to mutual companies comprehended in subparagraphs (b) and (c) of said statute.


December 10, 1953

Honorable C. Lawrence Leggett
Superintendent, Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Leggett:

The following opinion is rendered in reply to your recent request reading as follows:

> "There has been several instances when the question of the meaning of paragraph C and D under Sub-Section 1 of Section 375.330 has been disputed by mutual insurance companies formed under the laws of this state. Paragraph C limits the amount of money that a mutual company can invest in its home office building to 60% of its surplus, or 5% of its admitted assets as shown by its last annual statement, whichever is lesser. However, paragraph C is qualified by paragraph D and the purpose of this letter is to request an official opinion of your office as to whether or not paragraph D limits the amount of money which a mutual insurance company can invest in its home office building to $100,000 or does it mean such a company with the approval of the Superintendent can invest $100,000 over and above the amount in paragraph C."

Ruling of the question depends on the construction to be accorded the following language found in Section 375.330, RSMo 1949:

> "1. No insurance company formed under the laws of this state shall be permitted to purchase, hold or convey real estate, excepting for the purpose and in the manner herein set forth, to wit:

> "(1) Such as shall be necessary for its accommodation in the transaction of its business; provided, that before the purchase of real estate for any such purpose, the approval of the superintendent of the division of insurance must be first had and obtained and in no event shall the value of such real estate, together with all appurtenances thereto, purchased for such purpose
>
> "(a) If a stock company, exceed the amount of its capital stock;
>
> "(b) If a fire or casualty company, but not a stock company, exceed sixty per cent of its surplus or ten per cent of its admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed with the superintendent of the division of insurance, whichever is the lesser; or
>
> "(c) If any other type or kind of insurance company, exceed sixty per cent of its surplus or five per cent of its admitted assets, as shown by its last annual statement, whichever is the lesser; and provided further, that
>
> "(d) Any insurance company formed under the laws of this state, except a stock company, may with the approval of the superintendent of the division of insurance purchase such real estate as shall be necessary for its accommodation in the transaction of its business and having a value in excess of the foregoing limitations but not in excess of one hundred thousand dollars; or, * * *."

The above quoted language from Section 375.330, RSMo 1949, was last amended by repeal and re-enactment by the Sixty-Fifth General Assembly, Laws, 1949, p. 303. By such amendment, language now appearing at subparagraphs (a), (b), (c) and (d) was substituted for the following language:

> "* * * exceed the amount of capital stock of such company, if a stock company or a

> stipulated premium company, or one hundred thousand ($100,000.00) dollars for all other types and kinds of insurance companies; * * *."

The last quoted provision came into the statute in the amendment of 1933 (Laws 1933-34, Extra Session, p. 63) and remained unchanged until the 1949 amendment above referred to. Certainly the language of the statute prior to its amendment by repeal and re-enactment in 1949 was not ambiguous, and companies other than stock and stipulated premium companies were limited to the amount of one hundred thousand ($100,000.00) dollars when purchasing or holding real estate necessary for their accommodation in the transaction of their business under the portion of the statute being construed.

Subparagraphs (a), (b), (c) and (d) appearing in the latest amendment, descend into more detail than did the language it supercedes. Where the former provision had two classifications of companies, to-wit: (1) stock companies and stipulated premium companies, and (2) all other types of insurance companies, the new language may be broken down as follows:

(1) Subparagraph (a) puts stock companies generally in a class and limits their maximum expenditure for the purpose to the value of their capital stock.

(2) Subparagraph (b) puts non-stock fire and casualty companies in a class and limits the maximum expenditure for the purpose to sixty per cent of the companies' surplus or ten per cent of their admitted assets, as shown by their last annual statement preceding the date of acquisition, as filed with the superintendent of the division of insurance, whichever is the lesser;

(3) Subparagraph (c) puts in a separate class those companies which may not be grouped together under subparagraphs (a) or (b), and limits the maximum expenditure for the purpose to sixty per cent of the companies' surplus or five per cent of their admitted assets, as shown by their last annual statement, whichever is lesser;

(4) Subparagraph (d) is a qualifying provision affecting each of the three preceding subparagraphs (a), (b) and (c), and must be so construed. We reach this conclusion by reading the words "and provided further, that",

appearing in the last line of subparagraph (c), as a continuation of the subject matter treated in the preceding subparagraphs. This view is justified if we refer to S.B. 115, Laws, 1949, p. 303, where we find the actual bill of enactment, before it had been subdivided and placed in the 1949 Revised Statutes. Subparagraph (d) affects its preceding subparagraphs (a), (b) and (c) in the following manner:

(1) All stock companies, as comprehended in subparagraph (a), are specifically read out of subparagraph (d);

(2) Non-stock fire or casualty companies referred to in subparagraph (b), and whose maximum expenditure for the purpose is limited by such subparagraph to sixty per cent of their surplus or ten per cent of their admitted assets, whichever is the lesser, may, with the approval of the superintendent of the division of insurance, exceed such maximum and raise their expenditure to not to exceed one hundred thousand ($100,000.00) dollars;

(3) Insurance companies comprehended in the classification shown in subparagraph (c), namely, any companies which may not be grouped under subparagraphs (a) and (b), and whose maximum expenditure for the purpose if limited by subparagraph (c) to sixty per cent of their surplus or five per cent of their admitted assets, whichever is the lesser, may, with the approval of the superintendent of the division of insurance, exceed such maximum and raise their expenditure to not to exceed one hundred thousand ($100,000.00) dollars.

No technical terms or patent ambiguities appear in the quoted language of the statute being construed and the following rule found in Orthwein vs. Germania Life Insurance Co., 261 Mo. 650, l.c. 673, is being followed:

> "* * * When a law is plain and unambiguous in terms, we are not allowed to vary, enlarge or reduce it because of speculative theories of our own. * * *."

To contend that subparagraph (d), supra, which allows companies mentioned in subparagraphs (b) and (c) to expend for the purpose one hundred thousand ($100,000.00) dollars with the approval of the superintendent of the

Honorable C. Lawrence Leggett:

division of insurance, in effect, raises the maximum amount mentioned in subparagraphs (b) and (c) by one hundred thousand ($100,000.00) dollars is to re-write subparagraphs (b) and (c) and nullify the effect of subparagraph (d) as a limitation on the two preceding subparagraphs.

CONCLUSION

It is the opinion of this office that the one hundred thousand ($100,000.00) dollar limitation found in subparagraph (d) of Section 375.330, RSMo 1949, applicable to an insurance company's right to purchase, hold and convey real estate for its accommodation in the transaction of its business, is applicable to mutual insurance companies comprehended in subparagraphs (b) and (c) of said statute.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON
Attorney General

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