INSURANCE - FIRE -
SCHOOL DISTRICT:

"A COPY OF THIS OPINION SHOULD NOT BE RELEASED BECAUSE IT IS QUESTIONABLE WHETHER OR NOT IT EXPRESSES THE LAW AT THE PRESENT TIME. STUDY IS BEING MADE TO DETERMINE WHETHER OR NOT IT SHOULD BE WITHDRAWN."

J.M.D.

January 17, 1934

FILED
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Honorable Edward H. Miller
Assistant Attorney General
418 Olive Street
St. Louis, Missouri

Dear Mr. Miller:

Receipt of your letter dated December 30, 1933, is acknowledged. The letter is as follows:

"I am enclosing a request for opinion made by Emmet V. Thompson of St. Louis, member of the insurance firm of Thompson, Kincade, O'Connor & Powers, regarding mutual fire insurance companies, such request being dated December 6, 1933, with supplemental letter dated December 11, 1933, and I am also enclosing specimen policy, copy of opinion rendered by you under date of October 24, 1933 to Board of Education, Normandy Consolidated School District, Fred B. Miller, Superintendent, 6701 Easton Avenue, St. Louis, Missouri, and also article reprinted from January 1931 issue of Journal of American Insurance.

It seems to me that your opinion above referred to covers this precise point, and I am prepared to write to Mr. Thompson stating that the matter has already been ruled upon and referring him to your opinion, if such a course would meet with your approval. My point in writing you and sending you this material is chiefly to mention the article from the Journal of American Insurance for your consideration which was of considerable interest

> to me, and if the view expressed in your opinion is not modified after reading such article, and you will so advise me I shall write to Mr. Thompson along the lines above suggested. When you have finished with these documents, will you please return them to me?"

Numerous inquiries have been addressed to this office concerning our opinion to the Board of Education of Normandy Consolidated School District dated October 24, 1933. An answer to your letter will serve as an answer to all such inquiries.

In Rosebraugh v. Tigard 252 Pac. 75, the Supreme Court of Oregon defining mutual insurance, at page 77 of the opinion said:

> "In a mutual insurance association, the system is that the members mutually insure each other. It is that form of insurance in which each person insured becomes a member of the company or association and members reciprocally engage to indemnify each other against losses; any loss being met by an assessment laid on all members. As an object to be effected, mutual insurance does not differ materially from any other kind of insurance; it is not properly a distinctive class of insurance, but may embrace all other classes. A mutual insurance association is one in which the members are both the insurers and the insured; and the premiums paid by them constitute the fund which is liable for the losses and expenses, and they share in the profits in proportion to their interest and control and regulate the affairs of the association. 32 C. J. Sec.67,p.1018."

In Lamb and Company v. Merchants' Nat. Mut. Fire Ins. Co. 119 N. W. 1048, the Supreme Court of North Dakota discussing mutual insurance, at page 1049 of the opinion said:

> "May on Insurance, at section 146,says: 'Mutual insurance, it is truly observed, is essentially different from stock insurance, and much of the litigation that has grown out of this species of insurance has been owing to inattention to this

> difference. Its original design was to provide cheap insurance by means of local associations, the members of which should insure each other. ' "

On the same subject the appellate court of Indiana in the case of Miller v. State Life Insurance Company 60 N. E. 958, at page 960 of the opinion held:

> "It cannot be said that the mutual principle, of itself, necessarily requires that each member shall be insured upon exactly the same terms. Thus, in Mygatt v. Insurance Co. 21 N. Y. 52, the court said: 'An mutual insurance company is simply a company whose fund for the payment of losses and expenses consists, not of a capital subscribed or furnished by outside parties, but of premiums mutually contributed by the parties insured. * * * When it is considered that the term 'mutual', as applied to an insurance company, does not import any peculiar and exact method of producing mutuality, in the sense of equality among its members, but that it is simply significant of an association for the purpose of insurance, whose fund for the payment of losses consists, not of a capital furnished by uninsured parties, but of the premiums mutually contributed by the persons insured, all difficulty on the subject is at an end.' "

The Supreme Court of the State of Missouri, in State ex rel v. Insurance Company 91 Mo. 311, discussing the insurance policy involved in that litigation and in reference to defendant being a mutual insurance company, at page 316 of the opinion said:

> "The principle of the scheme throughout is mutuality and the contrary not being declared by the law, each policyholder becomes a member of the association and

continues such, certainly, during the life of the policy."

The foregoing authorities define mutual insurance companies as we understand it now and as we understood it when the opinion of this office dated October 24, 1933, addressed to the Board of Education of the Normandy Consolidated School District was written.

If the liability and obligation of a policyholder under his insurance contract is fixed or determinable in amount at the date of the issuance of the policy or if the obligation and liability of the policyholder does not depend on the losses of similar policyholders or other such contingencies, then the acceptance of such a contract would not make the holder thereof a member of nor stockholder in a mutual insurance company in the real and strict sense of mutual insurance. In other words, such insurance would not be mutual insurance. The character or classification of a fire insurance company, generally speaking, is to be determined from the contract or policy issued by the company and not from the name employed and in use by such company.

On the other hand, when by the terms of a fire insurance policy and contract each policyholder is liable for the fire losses of all like policyholders and to the full amount of the insurance held by such policyholders, whether the liability is to be paid according to assessments levied therefor or otherwise, then and in that event the policyholder in such a company becomes a member of and thereby a stockholder in a mutual fire insurance company.

We adhere to our opinion dated October 24, 1933, holding that the Board of Directors of a school district in the State of Missouri does not have the legal right to insure the property of a school district in a mutual fire insurance company, as mutual insurance is defined and when the same is of the character described in the last foregoing paragraph.

It is and will be the policy of this office not to express an opinion as to any particular form of policy or contract of insurance with reference to whether the same is a contract for mutual insurance or not. The foregoing should make it clear as to what our idea of mutual insurance is and those interested will determine for themselves the legal effect

of the policy or insurance contract they may or may not accept.

We return you your inclosures herewith.

Very truly yours,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC

Inclosures