FOREIGN MUTUAL FIRE INSURANCE CORPORATIONS - Authority to accept all-cash premium.

November 9, 1934

11-14

Honorable Leo A. Politte
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Sir:

We have your request of October 19, 1934 for an opinion upon the following facts:

> "May a foreign mutual fire insurance company, licensed to do business in Missouri under Article VI of Chapter 37, R. S. 1929, (the Missouri Insurance Code), and authorized by its charter so to do, issue a non-assessable policy, that is, a policy upon which the entire premium is paid in cash in advance and to which no liability is attached for the payment of an assessment upon the happening of certain contingencies in the future, provided, such company maintains the unearned premium and other reserves required by law?"

In answer thereto, we briefly call your attention to the following general rules relative to the interpretation of insurance contracts in this state. The

statutes of this state are written into every insurance contract. Cravens v. Insurance Company, 148 Mo. 583.

The pertinent part of Section 5796, R. S. Mo. 1929 is as follows:

> " ** any mutual company upon a majority vote of its members present at an annual meeting, or at any special meeting called for that purpose after one week's notice by advertisement in one or more newspapers printed and published in the city or county where the chief office of said company is located, may charge and receive for the mutual benefit of all its policyholders cash in payment of premiums on such of its policies as shall be, by a majority vote of such meeting, determined upon."

The above method of collecting cash in lieu of notes has been approved in State ex rel. v. Insurance Company, 91 Mo. 311; 3 S. W. (2d) 383.

Section 5810 R. S. Mo. 1929 provides:

> "The board of directors of every mutual insurance company * shall have the power, * in order to settle the losses insured against, and the expenses and other liabilities of the company, to make an assessment upon the premium notes given by persons effecting insurance of the company. Such assessment shall be made upon each and every note held by the Company at the time of the

> assessment, and which has been in existence for <u>one year</u> prior to the date of the assessment, -- No person shall, in any case, be liable upon any premium note on account of any and all claims and assessments upon the same for an amount greater than the face of such note."

It would appear that in the payment of losses by the mutual insurance company, the above statute (5810) should be construed so as to harmonize with Section 5796. The all-cash premium therefore received for such insurance policies would be liable for the payment of losses and expenses of the company up to and including the full amount of such premium, and the unused portion, if any, returned to the policy holder. The cash premium received under Section 5796 is for,

> "the mutual benefit of all its policy holders."

In State ex rel v. Insurance Company (1886), 91 Mo. 311, l.c. 318, the Supreme Court en banc said:

> "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 <u>the cash stands for the note</u>."

Upon policies of insurance where the all-cash premium is accepted in lieu of a note, then the term "note" contained in the following part of Section 5809 should be read as "cash":

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379.095

> " ** said note, or such part thereof as shall remain unpaid at the expiration or termination of the policy, shall be given up to the maker of the same, provided all assessments upon such note and all liabilities of said maker to the company shall have been paid. ** "

From the above, it is apparent that a mutual insurance company may accept an all-cash premium, which such premium becomes a trust fund in the hands of the insurance company for the liquidation of its losses and expenses; is held for the "mutual benefit" of all its policy holders. The cash premium, upon being paid to the insurance company, does not become the absolute property of said insurance company, but is only subject to its pro rata share of the expenses, liabilities and losses of the company which must be paid from such cash premiums fund.

It is, therefore, the opinion of this office that a foreign mutual fire insurance company licensed to do business in this state may issue an all-cash premium policy, wherein the insured is no longer subject to additional assessments, but the all-cash premium so received is to be used for the purpose of paying losses and expenses of the company, and the unused portion thereof returned to the policy holders upon the termination of the insurance contract.

The opinion heretofore written on this matter under date of January 12, 1933, insofar as it may conflict with this one, is withdrawn.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney General

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