

INSURANCE:

MUTUAL INSURANCE COMPANIES:

County mutual insurance companies that have elected to accept the provisions of Sections 380.580 to 380.840, RSMo 1959 are subject to the provisions of

Sections 379.810 to 379.880 V.A.M.S. and that town mutual insurance companies under 380.280 to 380.470, RSMo 1959, and farmers mutual insurance companies organized operating under Sections 380.580 to 380.840, RSMo 1959, are not subject to and cannot become subject to Sections 379.810 to 379.880, V.A.M.S.

OPINION NO. 52

March 19, 1970



Mr. William Y. McCaskill  
Superintendent  
Division of Insurance  
Department of Business and  
Administration  
100 East Capitol  
Jefferson City, Missouri 65101

Dear Mr. McCaskill:

This opinion is in response to a request from your office dated November 10, 1969, asking whether county mutual insurance companies, town mutual insurance companies and farmers mutual insurance companies are subject to the provisions of Section 379.131, House Bill No. 772 Seventy-fifth General Assembly.

The provisions of such bill have been renumbered by the revision of statutes. Section 379.810 reads in part as follows:

"1. There is hereby established the Missouri Basic Property Insurance Inspection and Placement Program, hereinafter referred to as 'Program', to make available basic property insurance to persons having property interests in this state who are in good faith entitled to but who are unable to procure such coverage through ordinary methods. Such Program shall provide for the eq-

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uitable distribution and placement of risks among all insurers in the manner and subject to the conditions hereinafter stated.

Section 379.815 V.A.M.S. reads in part as follows:

"As used in this section the following terms mean:

"(1) 'Insurer' means any insurance company, reciprocal or interinsurance exchange or other organization licensed and authorized by the superintendent to write property insurance, including the property insurance components of multi-peril policies, on a direct basis, in this state."

The specific question is whether the term used in Section 379.815, subsection (1) "any insurance company" includes companies organized under Chapter 380.

In rendering this opinion, it will be necessary to deal with several subquestions. The first subquestion presented is as follows:

Are county mutual insurance companies accepting the provisions of 380.580 to 380.840, .RS.Mo., 1959, subject to 379.810 to 379.880, R.S.Mo., 1969, and included in the definition of 'Insurer'?

County mutual insurance companies prior to August 29, 1953, were organized under Section 380.010 to 380.270. A county mutual insurance company organized and continuing to operate under those sections was exempted from the operation of all other general insurance statutes by Section 380.060. In 1953, Section 380.009 was enacted and reads as follows:

"No county mutual insurance company shall hereafter be organized or incorporated under the provisions of sections 380.040 to 380.270, but nothing in this section shall be construed as restricting or abridging in any manner the right of any county mutual insurance company now incorporated and licensed to do business in this state from continuing to do

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business under the provisions of sections 380.040 to 380.270."

At the same time, the legislature enacted Section 380.600, which allows a county mutual organized under the provisions of Sections 380.040 to 380.270 to avail itself of the rights, powers and privileges and immunities conferred by Sections 380.580 to 380.840, and this section states when the company avails itself of these provisions, such company shall be fully subject to and governed by Sections 380.580 to 380.840. It seems clear that the legislature thus intended to provide that county mutuals electing to come under the provisions of Sections 380.580 to 380.840 would be governed by those sections.

Sections 380.580 to 380.840 do not provide that county mutual insurance companies shall be exempt from all other provisions of the insurance laws of this state. As a result, it is the opinion of this office that county mutual insurance companies that have elected to accept the provisions of 380.580 to 380.840 are in fact subject to Sections 379.810 to 379.880 V.A.M.S.

Subquestion two is as follows:

Are town mutual insurance companies under 380.280 to 380.470, R.S.Mo., 1959, subject to Sections 379.810 to 379.880 V.A.M.S. and included in the definition of 'Insurer'?

Town mutuals were not given the opportunity to elect to come under the provisions of Sections 380.580 to 380.840 and as a consequence, town mutual insurance companies are governed by Sections 380.280 to 380.470. Section 380.290, RSMo 1939 reads as follows:

"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 bylaws, and not inconsistent with the provisions of sections 380.280 to 380.470, shall be exempt from all laws of this state governing other insurance companies, except that such companies shall comply with sections 148.310, 379.185 and 379.190, RSMo."

In State ex rel Brotherhood of American Yeomen v. Reynolds,

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229. S.W. 1057, (Mo. En Banc 1921), the question was whether as a prerequisite to the right of the defendant insurance company to interpose the defense of misrepresentation it must return the premiums received from plaintiff? The defendant insurance company was a fraternal beneficiary association and in part governed by Section 5, Laws 1911, pp. 285; Section 641, RS 1919 which reads as follows:

"'Except as herein provided, such societies shall be governed by this act and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.'"

Under the general insurance laws, it was provided that in suits brought upon life policies a defense based on misrepresentation would not be valid unless the defendant deposited in the court the benefits received on such policies. The court held that this general section did not apply to defendant and stated l.c. 1058 as follows:

"The language of this section is such that it would be difficult to employ words more comprehensive of the legislative purpose to exempt this class of associations from the provisions of the general insurance law, and to restrict their operations to the statute of their creation. In harmony, therefore, with the rules of construction which, in our opinion, are in accord with right reasoning, there is no escape from this conclusion. . . ."

I think it is clear that the legislature by enacting 380.290 intended to exempt town mutual insurance companies from the general insurance law and in accord with the reasoning in State v. Reynolds, supra, it is the opinion of this office that town mutual insurance companies are not subject to Sections 379.810 to 379.880.

Subquestion three is as follows:

Are farmers mutual insurance companies organized under Section 380.590, R.S.Mo., 1959, or accepting the provisions of 380.580 to 380.840, R.S.Mo., 1959, subject to Sections 379.810 to 379.880 and included in the definition of 'Insurer'?

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Section 380.800 RSMo 1953 provides as follows:

"Any farmers' mutual insurance company organized or operating under sections 380.580 to 380.840 shall be exempt from all provisions of other insurance laws of this state, not only in governmental relations but for every other purpose. No law hereafter passed shall apply to any farmers' mutual insurance company unless such law shall expressly declare that it is applicable to such farmers' mutual insurance companies."

This statute is inclusive of companies organized under Section 380.590 and companies availing themselves of the provisions of Sections 380.580 to 380.840. Under the authority of *State v. Reynolds, supra*, it is the opinion of this office that farmers mutual insurance companies organized or operating under Sections 380.580 to 380.840 are not subject to Sections 379.810 to 379.880 V.A.M.S.

Subsection four is as follows:

If in the event Sections 380.290 and 380.800 exempt said companies or such companies are otherwise not subject to Sections 379.810 to 379.880, may they voluntarily become subject to said sections?

In *State v. Reynolds supra*, the court held that companies made exempt from the general insurance laws must restrict their operations to the statute of their creation. It is therefore the opinion of this office that those companies which are exempted from Sections 379.810 to 379.880 V.A.M.S. are also prohibited from voluntarily accepting the provisions of Sections 379.810 to 379.880.

#### CONCLUSION

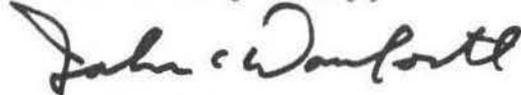
It is the opinion of this office that county mutual insurance companies that have elected to accept the provisions of Sections 380.580 to 380.840, RSMo 1959 are subject to the provisions of Sections 379.810 to 379.880 V.A.M.S. and that town mutual insurance companies under 380.280 to 380.470 RSMo 1959 and farmers mutual

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insurance companies organized or operating under Sections 380.580 to 380.840, RSMo 1959, are not subject to and cannot become subject to Sections 379.810 to 379.880 V.A.M.S.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Alfred C. Sikes.

Yours very truly,



JOHN C. DANFORTH  
Attorney General