

Dear Sir:

You have asked if insurance associations known as "reciprocal or inter-insurance exchanges" are eligible for a license to carry on an insurance business in this state.

The term "reciprocal insurance" is used to describe a system "whereby individuals, partnerships, or corporations engaged in a similar line of business undertake to indemnify each other against a certain kind or kinds of losses by means of a mutual exchange of insurance contracts, through the medium of a common attorney in fact appointed for that purpose by each of the underwriters, under agreements whereby each member separately becomes both an insured and insurer with several liability only." Annotation in 94 A. L. R. 836. See also like definitions in 1 Couch on Insurance, Section 33, *In re Minnesota Ins. Underwriters*, 36 Fed. 2d, 371.

Illustrative agreements for this type of organization are set out in detail in *Hanson v. Farmer's Auto Inter-Insurance Exchange (Colo.)*, 34 Pac. 2d 188, *W. R. Roach & Co. v. Harding (Ill.)*, 188 N. E. 331, *In re Minnesota Insurance Underwriters (D. C.)*, supra.

There is no statute in this state specifically permitting or prohibiting an organization of this type to carry on an insurance business in this state. The general insurance laws however do deal with "corporations, associations, societies, partnerships, and individuals." Section 6111, Revised Codes of Montana, 1935, provides "Corporations, associations and societies, organized to do the following described business, are insurance corporations within the meaning of this Act * * * Foreign insurance corporations, associations, and societies shall include every insurance corporation, association, and society organized under the laws of the United States of America, or any state or territory of the United States of America other than this or any other nation, government or country."

Section 6152, Revised Codes of Montana, 1935, provides:

"The provisions of the foregoing sections relative to foreign companies apply to all companies, partnerships, associations, or individuals, whether incorporated or not."

Opinion No. 72

**Insurance—State Auditor—
Reciprocal Exchanges**

HELD: 1. Foreign reciprocal or interinsurance exchanges are eligible for admission to carry on an insurance business by complying with the general insurance law of the state.

June 2, 1939.

Honorable John J. Holmes
State Auditor and Ex-Officio
Commissioner of Insurance
State Capitol Building
Helena, Montana

Section 6112, Revised Codes of Montana, 1935, requires "all insurance corporations, associations, and societies," to procure a license before commencing to do business. See also Section 6115.

Section 6150, Revised Codes of Montana, 1935, relating to the admission of foreign insurance corporations provides:

"Foreign insurance companies— permission to transact business. Any corporation organized under the laws of any state, district, or territory of the United States other than the State of Montana, or under the laws of any foreign country, to transact the business of fire or casualty insurance on the mutual plan, in accordance with the law of the state or country of its organization, may be permitted to transact any business within the State of Montana which it is authorized to transact in the state or country where it is organized, upon complying with the laws of the State of Montana applicable to it; provided, that such company is possessed of a surplus of two hundred thousand dollars or more; provided, however, that nothing in this Act shall apply to companies now authorized to transact business in the State of Montana."

In *State ex rel Intermountain Lloyds v. Porter*, 88 Mont. 347, the Montana Supreme Court under the sections we have quoted concluded that a Lloyds company, an unincorporated association organized under the laws of Utah, was eligible for admission into the state. The Court said (p. 355), "The individuals comprising Intermountain Lloyds complied with the laws of Utah in perfecting the organization. Whether the result of that organization was to create an association or whether it results in individuals operating in concert under a common name, the statute, Section 6111 et seq., constitute the sovereign grant of authority to do business in this state."

Then the word "corporation," as used in Section 6150, means corporation as defined in Section 6111 and includes associations, societies, and in the words of the Court "individuals acting in concert under a common name." Then it would seem if a

Lloyds association is eligible for admission to the state a reciprocal association would likewise be eligible. In Arkansas the Court used a decision declaring that reciprocals were doing an insurance business (*Casualty Reciprocal Exch. v. Bounds*, 88 S. W. (2) 836) as authority to admit a Lloyds organization, saying, "We have no statute expressly prohibiting a Lloyds organization from doing business in this state * * * but we agree that appellant is in fact an insurance company and it is the nature of the business which it transacts and not the name by which it may be called which controls." (*Lloyds America v. Harrison*, 101 S. W. (2) 439.) The Circuit Court of Appeals, Fifth Circuit, has declared that "business done under either the reciprocal or inter-insurance plan, or Lloyds plan is 'insurance' and subject to the general insurance laws of the State of Texas." (*Republic Underwriters v. Ford (Tex.)*, 100 Fed. (2) 511.)

In view of this well-nigh unanimous authority I am of the opinion that a reciprocal company is entitled to apply for admission to this state and if your department finds it is qualified as to solvency and responsibility, is entitled to be licensed to carry on an insurance business within the state.