

**Insurance Company, Mutual When May Do Business—
Insurance Commissioner, Power of, Mutual Company.**

Prescribing when a mutual company may transact business in this state.

July 15, 1920.

Hon. Geo. P. Porter,
Commissioner of Insurance,
Capitol.

Dear Sir:

This is in answer to your letter of June 13th, 1920, in reference to the application of Eureka Mutual Insurance Company of Philadelphia for a license to operate in the State of Montana.

You ask whether the guarantee fund consisting of \$100,000.00 is considered a liability or a surplus in contemplation of law.

In this connection resort must be had to Chapter 135, Laws of 1918. This Chapter provides that a foreign insurance company organized on a mutual basis shall be permitted to do business in the State of Montana providing that said company possesses a surplus of \$200,000.00 or more. What a surplus may technically mean in one instance it does not necessarily mean in another. The term "surplus", as used in Chapter 135, I take it, means a fund which can be used by an insurance company in the same manner and for the same purpose as a stock company uses its capital stock, or so much thereof as the company actually has left

for business purposes. Chapter 135 of the Laws of 1919 means that a foreign mutual company must have \$200,000.00 which it can apply to the payment of liabilities arising out of its business.

Taken in the sense above indicated, the guarantee fund of the Eureka Mutual Insurance Company, I believe, can be considered as a part of the company's surplus. This guarantee fund is contributed by the members of the company very much in the same manner as the payment of stock in a stock company. The certificate given as evidence of a contribution to the guarantee fund provides that the money shall be used for the payment and satisfaction of outstanding obligations of the company arising either upon policies or to other creditors. The fund thus set aside for this purpose, I believe, under Chapter 135 of the Laws of 1919, should be considered as a surplus.

Respectfully,

S. C. FORD,

Attorney General.