Insurance—State—Mutual Insurance Companies.

The State or subdivisions thereof may insure its property in a mutual insurance company where the liability of the policy holder is limited without violating the provisions of Section 1, Article XIII, of our State Constitution.

George P. Porter, Esq., January 4, 1930.
State Auditor and Commissioner of Insurance,
Helena, Montana.

My dear Mr. Porter:

You have requested my opinion whether Section 1 of Article XIII of the Constitution of this State prohibits the State, counties, school dis-

tricts and municipalities from insuring any of their property in a mutual insurance company.

Section 1 of Article XIII of our State Constitution provides as follows:

> "Neither the State nor any county, city, town, municipality, nor other subdivision of the State shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the State by operation or provision of law."

This question was presented to the Supreme Court of Pennsylvania in the recent case of Downing et al. vs. School District of City of Erie et al., 147 Atl. 239, under a constitutional provision similar to ours, and in discussing the question the court said:

> "Our constitutional provision was designed to prevent municipal corporations from joining as stockholders in hazardous business ventures, loaning its credit for such purposes, or granting gratuities to persons or associations where not in pursuit of some governmental purpose. Taking of insurance in a mutual company with limited liability is not within the inhibition, for the district does not become strictly a stockholder, nor is it loaning its credit. It agrees to pay a fixed sum, and can be called upon for the total only in case of some unusual catastrophe causing great loss. Until this contingency arises it is required to advance but a small portion of the maximum, and is, in effect, loaned credit as to a possible future demand by the company for the balance which may become payable. By the terms of the policy the district did not assume responsibility for losses of others insured, except as to a named and limited amount. The act of 1925 is presumably valid, and does not so plainly violate Section 7 of Article 9 of the Constitution as to justify us in holding the statute to be beyond the scope of legislative power."

See also Dillon on Municipal Corporations, 5th Edition, 976, as follows:

> "As an incident to the power to erect and maintain a city hall, schoolhouses, and other public buildings, the municipality has the right to contract for indemnity for loss by fire by insuring these buildings; and, having the power to insure, it may insure them in a corporation organized on the mutual plan under the laws of the state in which the city is located. Giving premium notes for losses incurred by such company on other insurance is neither a loan of the credit of the city, nor the owning of stock or bonds of the company, in violation of constitutional provisions."

See also: Johnson vs. School District (Ore.) 270 Pac. 764;
People vs. Stanley (Cal.) 225 Pac. 1.

In view of the foregoing authorities, it is my opinion that the State, counties, school districts and municipalities are not prohibited from insuring with a mutual insurance company where the liability is limited, but are prohibited from insuring with such a company of unlimited liability. See School District No. 8 vs. Twin Falls County Mutual Fire Ins. Co. (Ida.) 164 Pac. 1174, wherein it was held that the issuance to a school district of a policy of unlimited liability was in violation of a similar constitutional provision.

Very truly yours,
L. A. FOOT,
Attorney General.