

Insurance—State—Mutual Rural Insurance Companies.

The State or subdivisions thereof may not insure its property in a mutual rural insurance company as the liability of the insured is not limited, and to do so would violate the provisions of Section 1, Article XIII of our State Constitution.

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

January 9, 1930.

My dear Mr. Porter:

You have submitted to me the policy of the Tri-County Farmers' Fire Insurance Company of Phillips, Blaine, and Valley counties and requested my opinion as to whether the State or any subdivision thereof can insure with this company.

While the articles of incorporation as embodied in the policy did not so state, it is evident from the terms thereof that this a mutual rural insurance company, organized under the provisions of Chapter 17 of the political code of Montana of 1921.

This office has held that the State or any subdivision thereof could insure in a mutual insurance company where the liability of the insured was limited, without violating the provisions of Section 1 of Article XIII of the State constitution. However, in the case of a rural insurance company it is evident that the liability of the insured is not limited. In the first place the courts have held that the insuring in a mutual company of limited liability does not constitute the making of the insured a member of the company within the meaning of the constitutional prohibition, while the very provisions of the act under which this company is formed, makes each insured a member thereof, and a membership fee is charged as well as an insurance premium. Further, it is to be noted that in the case of a mutual insurance company, the provisions of Sections 6130 and 6131, R.C.M. 1921, require not less than

\$200,000 of capital stock and cash and notes on hand in the sum of \$25,000 before the company can commence to do business, while a mutual rural insurance company is only required to have twenty-five members and applications for insurance aggregating \$50,000 in order to do business.

It is at once evident that the strength of a mutual rural company depends not so much on the amount of insurance written but upon the number of members and the ability of the members to meet any assessment levied against it, and under these circumstances the insuring of the State or any of its subdivisions with a mutual rural company which necessitates the becoming a member thereof is without doubt the lending of credit as contemplated by the Constitution, for it constitutes putting the resources of the State or subdivision thereof back of every policy written. In this regard it should be further noted that in the case of a mutual insurance company the liability of the insured is limited by the provisions of Section 6144, R.C.M., 1921, while Section 6204, R.C.M., 1921, distinctly provides that the provisions of this section do not apply to a mutual rural company.

It is therefore my opinion that since the company in question is a mutual rural insurance company, that the insuring and becoming a member thereof by the State or any subdivision of the State would constitute a violation of Section 1, Article XIII of our State constitution.

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