

Opinion No. 124.**Insurance—Fire Insurance—Liability Insurance.**

HELD: A company authorized to write liability insurance under Section 6136, paragraph 4, is not authorized to write fire insurance.

July 29, 1937.

Hon. John J. Holmes
State Auditor and Ex-officio
Commissioner of Insurance
The Capitol

Dear Mr. Holmes:

You have asked my opinion as to whether or not a casualty company operating under the provisions of paragraph 4 of Section 6136, R. C. M. 1935, may write automobile fire coverage—a coverage provided for in subdivision 1 of Section 6136, R. C. M. 1935.

Paragraph 1 of said Section 6136 authorizes an insurance company to insure against loss, or legal liability for loss, because of damage to property but not against loss resulting in injury to persons. This section reads in part as follows:

“* * * and to insure against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles * * *.”

On the other hand, paragraph 4 of said Section 6136 authorizes an insurance company to write liability insurance in the following language:

“* * * and to permit liability insurance in all its branches.”

Section 6137, R. C. M. 1935, provides:

“Nothing in the act shall be construed as to alter, change, modify, or repeal any existing statute, which provided or established the amount of the capital required of any or all classes of insurance corporations

herein mentioned. Combinations may be permitted of the different classes herein established, under one incorporation, except that fire insurance companies may not transact any other character of business than that designated in paragraph 1 of the preceding section, and provided further, that where such combinations may be formed, the minimum capital shall be equal to the amount provided by law for each of the different classes so combined."

It has been held by former Attorneys General that by reason of this section a fire insurance company is prohibited from writing liability insurance and that any insurance company, authorized to write fire insurance, is a fire insurance company (Volume 14, Opinions of the Attorney General, p. 7; Volume 8, p. 264). We agree with these opinions. In fact, we do not see how any other correct conclusion could be reached in view of said Section 6137.

If the company in question is authorized to write fire insurance it must be by authority of paragraph 1 of Section 6136, and it is therefore a fire insurance company. If it derives its authority from this source and is a fire insurance company, it is expressly prohibited by Section 6137 from writing liability insurance. If a fire insurance company may not write liability insurance, it follows that a casualty company authorized to write liability insurance may not write fire insurance.

It is therefore my opinion that a casualty company, authorized under paragraph 4 of Section 6136 to write liability insurance, is not authorized to write fire insurance by reason of the express prohibition contained in Section 6137.