

Opinion No. 136.

**Corporations—Insurance—Capital
Stock Companies—Mutual In-
surance Companies.**

HELD: 1. In determining the capital structure of Insurance Companies other than life, organized under Chapter 28 of the Revised Codes of the State of Montana, section 6130 refers and is applied only to such Insurance Companies as are stock companies and issue stock.

2. Mutual Insurance Companies other than life organized under Chapter 23, R. C. M. 1935, are wholly governed in the Capital Structure set-up by Section 6131 of said chapter.

3. In subsequent sections of the said chapter wherein both Sections 6130 and 6131 are mentioned as controlling, Section 6130 shall be applied to such companies as have a stock set-up, and 6131 to such companies as have no stock but on the contrary are mutual.

4. Both Sections 6130 and 6131 are valid, constitutional and subsisting to all intents and purposes as reference thereto may be made throughout the said chapter.

August 11, 1937.

Mr. John J. Holmes
State Auditor
The Capitol

Attention of Mr. J. D. Kelley.

Dear Sir:

We have your request for an opinion interpreting Sections 6130 and 6131, R. C. M. of 1935, as related one to the other, and the subsequent sections of Chapter 28 of the said Codes as it refers to said Sections 6130 and 6131.

Without going into the history of the Act, namely Chapter 28 of our Codes, it is easy to see that there might be a discrepancy, or even a repugnancy, in the construction of these particular sections.

Chapter 28 in the Codes of 1935 has reference to stock and mutual companies other than life. The original enactment of this particular statute occurred in the Thirteenth Session of our Territorial Legislature in the year 1883. The title of the act being, An Act Regulating Insurance Companies. Section 1 of the act is verbatim practically with

Section 6128, Revised Codes of Montana, 1935. Section 3 of the act reads as follows:

"No joint stock company shall be incorporated under the provisions of this act with a smaller capital than two hundred thousand dollars, nor more than one million dollars, as may be specified in the certificate of incorporation, which stock shall be divided into shares of one hundred dollars each, of which capital at least fifty per cent. shall be fully paid up in cash, and that for the remainder of its capital there are in its possession notes of its stockholders, secured by at least one surety, or by mortgages on unincumbered real estate within this Territory, worth at least twice the amount of such notes, which notes or other security shall be approved by the territorial auditor; nor shall any company, on the plan of mutual insurance, commence business in this Territory until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in actual cash, and for the remainder of which notes of solvent parties, founded upon actual and bona fide applications for insurance, shall have been received; no one of the notes received, as aforesaid, shall amount to more than five hundred dollars, and no two thereof shall be given for the same risk, or made by the same person or firm, except when the whole amount of such notes does not exceed the sum of five hundred dollars, nor shall any note be regarded or represented as capital stock unless a policy be issued upon the same within thirty days after the organization of the company taking the same, upon a risk which shall be for no shorter period than twelve months; each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company; and no notes shall be accepted as a part of such capital stock unless the same shall be accompanied by a certificate of the clerk of

the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same in property not exempt from execution by the laws of this Territory, and no such note shall be surrendered while the policy for which it was given continues in force."

You will note, then, that Section 3 comprises both Sections 6130 and 6131, R. C. M. 1935. The compiled statute of 1887 is a verbatim copy of the Thirteenth Legislature Session of 1883, and what is now our Sections 6130 and 6131. And the compiled statute of 1887 comprises one section, number 566. There was no division of Section 566 by legislative act, but it appears that in the codifying of the compiled statute of 1895, capital stock companies were numbered Section 652, while mutual companies were numbered Section 653, and this has been carried down to the present and it naturally gives rise to a difference of opinion as to the interpretation of the said sections, as well as subsequent sections, in relation thereto and in relation one to the other.

The law respecting the construction of statutes, apparently inconsistent even to the appearance of repugnance, is quite common to the effect that it is the duty of the courts to give such construction to the statutes and sections thereof, or statutes in *pari materia*, as will give validity to each and all of them. There are countless citations, but we feel that citing in this particular instance is unnecessary; nevertheless, this particular feature of the law requests of us, too, that we try and harmonize inconsistent and repugnant statutes relating to the same subject.

Mindful of this rule of construction, let us assume, for the purpose of harmonizing, that instead of Sections 6130 and 6131 our statute had carried both subject matters under Section 6130 as was the original enactment, then, in reading the subsequent sections indicated by your letter, for instance, 6143, it would have read:

"All notes deposited with any mutual insurance company at the time of its organization, as provided for in Section 6130 of this Code, shall remain security for losses and claims
* * *"

This would simply advise you to turn back to Section 6130 and apply to Section 6143 such portions of the said Section 6130 as would be applicable, depending upon whether it is mutual or stock insurance company. The same reasoning would apply to all other sections within the chapter.

It is our opinion, then, in short, that both sections are valid, constitutional, and effective. That where mutual companies are concerned Section 6131 applies, and where stock companies are concerned Section 6130 shall control.

Trusting that we have made ourselves clear and that you may be governed accordingly, feeling free to ask additional information pertaining thereto, we are