

**Opinion No. 217.****Cities and Towns—Insurance—  
Mutual Insurance.**

HELD: A city or town may insure in a mutual company, provided the liability or premium to be paid is a fixed, definite, and limited amount.

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December 23, 1937.

F. C. Fluent, Esq.  
City Attorney  
Butte, Montana

My dear Mr. Fluent:

You have submitted to this office the question as to whether or not a city may insure its automobiles, for liability, in a mutual insurance company. (Our opinion not only applies to incorporated cities and towns, but to the State and all other political subdivisions as well.) Section 1 of Article XIII of our Constitution provides:

“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, company 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."

All political subdivisions of the State are prohibited from becoming a subscriber to, or a shareholder, or a joint owner, and prohibited from loaning its credit to any person or company. The liability defined in said insurance policy, and the premium to be paid, must be limited and definite. In your letter you have not advised this office as to whether or not the particular policy you are contemplating accepting shall provide for a stipulated and fixed premium or other obligation. If the liabilities provided for in said policy, including the premium to be paid, are limited and fixed, you are authorized to insure in such mutual company, and, of course, if the policy liabilities are unlimited, you are prohibited from insuring therein. The question you have submitted appears to this office to have been fully adjudicated in a case of *McMahon v. Cooney, et al.*, 95 Mont. 138. In that case the Court said:

"No question is here raised as to the validity of the two policies written in the stock-plan companies. The plaintiff contends that for various reasons, which will hereafter be noted, the policies of insurance in the mutual companies are null and void. These policies in the mutual companies all provide for a definite amount of insurance in consideration of the payment of a definite and fixed cash premium. They contain no provision on their face whereby the State of Montana may incur any additional liability other than the stipulated cash premiums. The articles of incorporation, in some instances, and the by-laws of each of these companies specify that the company may issue cash premium policies. All the mutual insurance corporations are incorporated under the laws of some state, other than Montana, and all have complied with the statutes of the State of Montana, necessary to their being authorized to transact business within the state, and have been authorized by the proper state authorities to engage in business within this state."

See Attorney General's Opinions, Volume 13, pages 217, 219.

Neither may a political subdivision of the State insure in a rural mutual insurance company, except rural school buildings. Under the authority of Section 6170 of the Revised Codes of Montana, 1921, a rural school building could not be insured in a rural mutual company, but under the provisions of Section 6170 of the Revised Codes of Montana, 1935, which is an amendment to the same numbered section appearing in the 1921 Codes, a rural school building may be insured in a rural mutual company, because the last said amendment expressly exempts a rural school from becoming a member of a mutual insurance company. While Section 6177 of the Revised Codes of Montana, 1935, provides that the liability of the members in a rural mutual company may be limited, yet nevertheless, with the exception of a rural school, any political subdivision of the State would become a member, and the constitutional provision, supra, prohibits such membership.

Therefore, it is my opinion that your city may insure its automobiles in a mutual company provided the liability or premium to be paid by the city to the company is a fixed, definite, and limited amount; and if said liability is unlimited and indefinite, you are prohibited from insuring in said company. And further, it is our opinion that no political subdivision of the State, with the exception of rural schools, may insure in a rural mutual insurance company.