

## Opinion No. 236.

Insurance—Mutual Hail—  
“Assets,” Defined.

HELD: “Assets” as used in Section 6184, R. C. M., 1935, should be defined as it is used generally in the business world; that is, as all property, including Accounts Receivable, which is available for the payment of debts.

May 20, 1940.

Honorable John J. Holmes  
State Auditor and Ex-Officio  
Commissioner of Insurance  
State Capitol  
Helena, Montana

Dear Sir:

The Empire Mutual Insurance Company of Albert Lea, Minnesota, has applied for license and certificate of authority to carry on the business of insuring against hail damage in the State of Montana.

Section 6184, Revised Codes of Montana, 1935, reads:

“All mutual hail, cyclone, and tornado insurance companies or associations, organized under the laws of another state and transacting business in this state, shall be required to comply with the provisions of the laws governing fire and miscellaneous insurance corporations doing business in this state; provided, that such companies shall be possessed of assets in excess of all liabilities of an amount equal to at least fifty thousand dollars.”

The applicant has submitted to the Commissioner of Insurance a financial statement disclosing that the Empire Mutual Insurance Company has on deposit in the First National Bank of Albert Lea, Minnesota, the sum of \$7,437.32. The report also reveals that the company has “additional assets” in an amount of \$46,787.61. This is composed of a balance of all premiums or assessments unpaid at the close of last year in an amount of \$31,745.32 and current assessments or premium notes unpaid in an amount of \$15,042.29.

The question presented is whether these assets totalling \$46,787.61 may be included in determining whether or not the applicant has assets of \$50,000 as required by Section 6184.

Funk & Wagnall's New Standard Dictionary defines assets as follows: "Assets—originally in the Anglo-French phrase *aver assets*, to have enough (viz., to discharge one's obligations); \* \* \* The entire property of all sorts \* \* \* of a person, association, corporation or estate, applicable or subject to the payment of his or its debts." In *Stanton v. Lewis* (26 Conn. 444, at 449) the Court said, "Assets means everything which can be made available for the payment of debts and includes real estate, personal property, stock and choses in action."

Section 6184, Revised Codes of Montana, 1935, was originally enacted as Chapter 180, Laws of 1907, as follows:

"An Act to Provide the Admission of Mutual Hail, Cyclone and Tornado Insurance Companies or Associations Organized Under the Laws of Another State."

This was separate legislation providing for the admission of this class of insurance company in a different manner from that in which companies writing other types of insurance would be admitted. The Supreme Court in the State of Montana was faced by an analogous proposition in *State ex rel Intermountain Lloyds v. Porter* (88 Mont. 347, 294 Pac. 363). In that case the question was whether a Lloyds company doing business under the Lloyds plan had sufficient capital to meet the Montana statutory requirement. In that case the Court declared that the meaning of the statute must be measured and controlled by the connection in which it is used and the evident purpose of the statute and its subject and gave a broad definition of the word "capital" and decided that a Lloyds company was eligible for admission.

It is a well recognized rule that hail insurance business carried on upon mutual basis is in a different situation from other types of insurance business. The State of Montana in its own hail insurance law provides for a system of writing the insurance and giving coverage and then not assessing the final premiums until after all the crops are harvested and the amount of damage determined. The applicant company does business upon the same basis, so that the standard rule determining what are and what are not admitted assets would not be applic-

able to this type of business. A broader definition of assets is needed and it was the legislative intent in enacting Chapter 180, Laws of 1907, that such liberal policy in admitting this particular type of company be followed.

I think the term "assets" as used by the statute should be defined as it is generally used in the business world; that is, all property, including Accounts Receivable, which are available for the payment of the debts of the corporation. Using that definition and seeking to carry out the legislative intent evidenced by the enactment of Section 6184, it is my opinion that the Empire Mutual Insurance Company of Albert Lea, Minnesota, has assets sufficient to entitle it to do business in the State of Montana. (See *Bankers Life Insurance Company v. Howland*, 73 Vt. 1, 48 Atl. 435.)