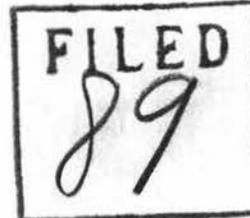


INSURANCE) Town Mutual Plate Glass Insurance Company may
) be formed under Sections 6203 and 6204, R. S.
) Missouri, 1939.

September 21, 1950

9-25-50



Honorable Walter H. Toberman
Secretary of State
Jefferson City, Missouri

Attention: John F. Spalding

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Mr. Raymond J. Lahey, an attorney in St. Louis, Mo., has contacted this office and requested the right to form a Town Mutual Plate Glass Insurance Company, and I advised Mr. Lahey that we will not accept his application until we have received your opinion in regard to this matter.

"The question involved is as follows:

"Article 16, Chapter 37, of the Missouri Revised Statutes, 1939, provides the method of setting up Town Mutual Insurance Companies--which have for their purpose the business of insuring against property damage, from lightning, tornadoes, windstorms, cyclones and fire.

"Under Article 16, Chapter 37, Section 6187, provides that no Town Mutual Fire, Lightning, Windstorm, Tornado or Cyclone Insurance Companies may be incorporated after July 1, 1925; but Section 6203 under the same article and chapter pertains to

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Town Mutual Plate Glass Companies, which is not specifically prohibited under Section 6187.

"Our question is--Can a Town Mutual Plate Glass Insurance Company be formed today under section 6203 and 6204, since Section 6187 does not specifically prohibit plate glass companies?"

Article 16 of Chapter 37, R. S. Missouri, 1939, deals with Town Mutual Insurance Companies. Section 6203 of said article provides:

"Hereafter all town mutual plate glass insurance companies, organized for the sole purpose of mutually insuring their members against loss or breakage to glass, and for the purpose of paying any loss incurred by any member thereof by assessment, as provided by their constitution and by-laws, may be incorporated under the provisions of this article, and shall be authorized to do the business provided for in the constitution and by-laws, and shall in all things be subject to the laws governing town mutual insurance companies, so far as the same are applicable thereto. Such companies shall be exempt from the provisions of the general insurance laws contained in this chapter, and nothing therein shall be so construed as to impair or in any manner interfere with any of the rights or privileges of any such companies doing a mutual insurance business in this state, as herein provided: Provided, that any such company may do business in any or all counties of this state; and provided further, that any member of any such company may sue such company the same as if he was not a member thereof."

Section 6204 provides:

"All town mutual plate glass insurance companies may incorporate by filing a

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copy of their constitution and by-laws with the secretary of state, and paying the sum of ten dollars to said secretary."

Section 6187 of said Article provides:

"No town mutual, fire, lightning, windstorm, tornado or cyclone insurance company may be incorporated under the provisions of this article after July 1st, 1925: Provided, however, that nothing in this section shall be construed as restricting or abridging in any manner the right to do business under the provisions of this article of any town mutual, fire, lightning, windstorm, tornado or cyclone insurance company now incorporated and licensed to do business in this state."

The first provision regarding the formation of town mutual, fire, lightning, windstorm, tornado or cyclone insurance companies is found in Laws of 1895 at page 200. Provision regarding the formation of town mutual plate glass insurance companies is found originally in Laws of 1897, page 137. Thus, it is seen that town mutual plate glass insurance companies were from the beginning treated separately from the other types of town mutual insurance companies. In the adoption of Section 6187 prohibiting the incorporation of town mutual, fire, lightning, windstorm, tornado or cyclone insurance companies, after July 1st, 1925, no reference was made to town mutual plate glass insurance companies. In the 1949 revision the provisions of Section 6189 regarding the issuance of the certificate by the Secretary of State were omitted on the theory that provisions for the formation of town mutual fire, lightning, windstorm, tornado or cyclone insurance companies were obsolete. However, no change was made in either Section 6203 or 6204. (House Bill No. 2097, Sixty-fifth General Assembly.)

Repeals of statutes by implication are not favored, and for such repeal to occur there must be such total repugnance between the earlier and the latter statute that the earlier statute cannot stand. (State ex rel. to Use of George V. Peck Company v. Brown, 340 Mo. 1189, 105 S.W. (2d) 909.) We perceive no essential inconsistency between Section 6203 and Section 6204 providing for the organization

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of town mutual plate glass companies, and Section 6187 prohibiting the formation of town mutual, fire, lightning, windstorm, tornado and cyclone insurance companies. Therefore, we feel that Sections 6203 and 6204 remain in force and effect, and town mutual plate glass companies may be organized under said sections. The fact that no change was made in these sections in the 1949 revision of the statute supports this view.

CONCLUSION

Therefore, it is the opinion of this department that town mutual plate glass insurance companies may be formed under the provisions of Sections 6203 and 6204, R. S. Missouri, 1939, and that said sections are not affected by the provisions of Section 6187, R. S. Missouri, 1939, prohibiting the incorporation of town mutual, fire, lightning, windstorm, tornado or cyclone insurance companies after July 1st, 1925.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN
Assistant Attorney General



J. E. TAYLOR
Attorney General

RRW/feh