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INSURANCE — MUTUAL PROTECTIVE ASSOCIATIONS ORGANIZED UNDER SECTION 9593 GENERAL CODE — POWERS — RISKS — HAZARDS.

SYLLABUS:

Powers of mutual protective associations organized under Section 9593, General Code, discussed.

Columbus, Ohio, October 23, 1941.

Hon. John A. Lloyd, Superintendent of Insurance, State House Annex, Columbus, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

"A question has arisen with respect to the proper scope of business of mutual protective associations upon which I desire your opinion.

Section 9593, General Code, reads in part:

'Such associations may only insure farm buildings, detached dwelling, schoolhouses, churches, township buildings, grange buildings, farm implements, farm products, live stock, household goods, furniture, pleasure and utility vehicles, motor vehicles; steam, gas, gasoline and oil engines; motor truck, tractors, electric motors, electric appliances, lighting systems and other property not classed as extra hazardous.'

The question arises as to the proper construction of the words 'other property not classed as extra hazardous.' Under this language may mutual protective associations insure such mercantile risks as retail stores, garages, filling stations, combined stores and dwellings, hotels, slaughter houses, granaries and commercial poultry hatcheries?

While such associations are specifically exempted from the Bureau of Rating Law, it may be pointed out that the rates for some mercantile risks in protected areas are less than the rates

> on certain risks, such as barns in unprotected areas which these associations are specifically authorized to write. Representatives of some of the associations argue from this that such mercantile risks are not 'extra hazardous' as that term is used in Section 9593. Part of the difficulty in construing the portion of the statute in question comes from the fact that the classes of property specifically enumerated in the statute do not seem to fall in any particular category from the standpoint of hazard. On the basis of rates charged by companies operating on the advance premium plan, a few classes of property enumerated bear a sufficiently high rate to indicate that they are considerably more hazardous than the ordinary risk."

That portion of Section 9593, General Code, which is pertinent to your inquiry is correctly quoted in your letter. At first blush, it would seem that the term "extra hazardous" has a technical significance and that it was so used by the Legislature. If this were true, the words would, of course, be construed according to their technical meaning. However, an examination of the works of insurance writers who have discussed this question shows that the term "extra hazardous" does not have any well defined meaning in the insurance world, if, in fact, it has any meaning at all. Thus, in Vol. 3 of Dean's The Philosophy of Fire Insurance it is said at page 109:

> "We spoke of risks as non-hazardous, hazardous, extra-hazardous, etc., without knowing what these terms meant. No one today can state what constitutes a special hazard."

In the same volume at page 125 the author further says:

> " 'Non-hazardous, hazardous, extra-hazardous and specially hazardous,' conveyed meanings to the fire underwriter about as definite as the words 'snark' and 'Juju bird' convey to the mind of the ornithologist."

It would therefore seem that the term "extra hazardous" has no accepted technical meaning in the field of insurance and the words therefore should be construed "in their ordinary acceptation and signficance and with the meaning commonly attributed to them." 37 O.Jur., 542, Section 288.

Although these words leave much to be desired in the field of clarity and certainty and are so vague and indefinite that it is very difficult to determine what the legislature intended by their use, nevertheless, I believe that it would be highly inappropriate for me to declare these words

void because of uncertainty. Courts themselves hesitate to declare a statute void on the ground of uncertainty and, as was said in State, ex rel. Forchheimer, v. LeBlonde, 108 O.S., 41, "a proper deference to the legislative branch of the government requires that such questions should be approached with cautious circumspection." See also Eastman v. State, 131 O.S., 1, 7, 8.

If, therefore, it is possible to ascribe any meaning at all to the language in question, I must do so. It is difficult, if not impossible, to frame a specific definition of the words in question which can apply to every possible situation which might arise and I shall not attempt to. A great many factors must necessarily be considered in determining whether any particular risk is extra hazardous and in the final analysis the question is one of fact rather than of law.

The language used in that portion of Section 9593, General Code, which you have quoted in your letter, indicates that the legislature did not intend that the risks therein enumerated should be classed as extra hazardous and the question of whether certain risks enumerated in your letter are extra hazardous is a question of fact to be determined by you after investigation, which, it would seem, should include checking the experience record of various types of risks of fire insurance companies.

You are therefore advised that as a general rule a mutual protective association organized under Section 9593, General Code, may insure all of the risks enumerated in Section 9593, General Code, and other property which the experience record discloses is not classed as extra hazardous.

Respectfully,

THOMAS J. HERBERT,

Attorney General.