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MUTUAL PROTECTIVE ASSOCIATIONS:

1. AUTHORIZED TO COLLECT INITIAL CHARGE ON EACH CONTRACT OF INSURANCE—THE AMOUNT TO BE IN ACCORDANCE WITH ITS CONSTITUTION AND BY-LAWS PLUS AN AMOUNT NOT IN EXCESS OF ONE-TENTH OF ONE PER CENT OF AMOUNT OF CONTRACT OF INSURANCE—TOTAL CHARGE NOT TO EXCEED FIFTEEN DOLLARS—SECTIONS 3939.01 RC, 9593 GC.
2. ASSOCIATIONS FORMED UNDER SECTIONS 3939.01 RC, 9593 GC, AUTHORIZED TO INSURE DWELLINGS OTHER THAN DETACHED FARM DWELLINGS.
3. MEMBER OF ASSOCIATION—POLICY CANCELLED—NO RIGHT TO SHARE IN ASSOCIATION'S SURPLUS AT TIME OF CANCELLATION.
4. ASSOCIATIONS FORMED UNDER SECTION 3939.01 RC, 9593 GC, MAY INSURE AGAINST LOSS PROXIMATELY RESULTING FROM FIRE.

SYLLABUS:

1. Mutual protective associations are authorized by Section 3939.01, Revised Code, Section 9593, G.C., to collect an initial charge, on each contract of insurance, being an amount in accordance with its constitution and by-laws, plus an amount not in excess of one-tenth of one per cent of the amount of the contract of insurance, which total charge shall never exceed fifteen dollars.

2. Mutual protective associations, formed under Section 3939.01, Revised Code, 9593, G.C., are unauthorized to insure dwellings other than detached farm dwellings.

3. A member of a mutual protective association, whose policy has been cancelled by the association, has no right to share in the association's surplus at the time of cancellation.

4. Mutual protective associations, formed under Section 3939.01, Revised Code, Section 9593, G.C., may insure against loss resulting proximately from fire.

Columbus, Ohio, November 3, 1953

Hon. Walter A. Robinson, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"A number of questions have arisen regarding the proper interpretation of Section 9593 and following sections of the Gen-

eral Code of Ohio relating to mutual protective associations. Accordingly, we would appreciate your opinion on the following questions:

"1. Section 9593 provides in part as follows:

> 'Any association organized under the provisions of this section may collect an initial charge, on each contract of insurance, in accordance with its constitution and by-laws and in addition thereto an amount not in excess of one-tenth (1/10) of one per cent of the amount of each individual contract of insurance; provided, however, that the total amount of such charges shall not exceed the sum of fifteen ($15.00) dollars.'

"a. Does the statute mean that the initial charge plus all other charges shall not exceed $15, or that all charges excluding the initial charge shall not exceed $15?

"b. Are such associations authorized to make charges for reappraising property and rewriting policies or are the charges authorized by the last paragraph of Section 9593 to be assessed only once when a person becomes a member of the association, and must all subsequent expense be collected through assessments?

> "c. In this connection, please also advise whether, if the amount of coverage under a particular policy is increased sometime after the policy is written, additional charges may be levied against the member holding the policy and if so, whether the total charges may exceed $15.
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> "d. Also, if the association cancels a policy upon which it has collected its charges and immediately writes a new policy covering the same property, may the charges set forth in the last paragraph of Section 9593 again be made?

"2. Would it be proper for an association to refuse to issue policies affording coverage in excess of $15,000, but to issue separate policies aggregating over $15,000 and collect up to $15 in initial charges on each policy?

"3. Section 9593 provides that mutual protective associations may insure 'detached dwellings.' Does this mean that such associations may insure dwellings other than farm dwellings?

"4. If the association cancels a policy issued to a member for reasons other than failure to pay assessments or to abide by the provisions of the contract, does the association have any responsibility to pay to the member, whose policy has been canceled by the association, his pro rata share of the association's surplus at the time of cancellation?

"5. Is it proper under the provisions of Section 9593 for

an association to insure against loss by (a) removal from premises endangered by fire, (b) acts of destruction at the time of and for the purpose of preventing the spread of fire?"

Section 9593, General Code, of which you speak, has now become Section 3939.01, Revised Code. Section 3939.01, Revised Code, which deals with the organization of mutual protective associations, the scope of their business, and limitation on charges which such associations may make, reads as follows:

"Any number of persons of lawful age, not less than ten in number, owning insurable property in this state, may associate themselves together for the purpose of insuring each other against loss on property in this state caused by fire and lightning, smoke, smudge, cyclones, tornadoes or wind storms, hail storms, explosion except explosion by steam boilers or fly-wheels, riot, riot attending a strike, civil commotion, and falling or moving bodies except loss or damage to motor vehicles caused by collision, and also to assess upon and collect from each other sums of money, from time to time, as are necessary to pay expenses and losses which occur from such causes. The assessment and collection of such sums of money shall be regulated by the constitution and by-laws of the association, which shall require such assessments to be made directly and specifically upon the members, and to be paid directly and specifically by them and not out of any fund deposited with the association or other trustee in anticipation of assessments, nor in any other manner except that any such association may borrow money for the payment of losses and expenses, but such loans shall not be made for a longer period than the collection of their next assessment. Such association may also accumulate a surplus from its assessments not exceeding five dollars on each one thousand dollars of insurance in force, such surplus to be used in paying losses and expenses that occur. Such surplus, if invested, shall be under sections 3925.05 and 3925.08 of the Revised Code. Such associations may only insure farm buildings, detached dwellings and outbuildings, school houses, churches, township buildings, grange buildings, farm implements, farm products, live stock, household goods, furniture, pleasure and utility vehicles, motor vehicles, steam, gas, gasoline oil engines, motor trucks, tractors, electric motors, electric appliances, lighting systems and other similar property except property used exclusively for commercial or industrial purposes.

"Such property may be classified only for the purpose of determining and levying assessments and such property may be located within or without the limits of any municipal corporation. An association whose membership is restricted to persons engaged in any particular trade or occupation, and whose insurance is confined in any particular kind or description of property, may

> insure property located in any county in this state which is used exclusively for such commercial or industrial purposes. An association whose membership is so restricted and whose insurance is so confined and which insures such property may also accumulate from its assessments a surplus not exceeding five times the average yearly losses and expenses of the association, as shown by the reports of the association to the division of insurance for the preceding three years. Such surplus shall be used in paying losses and expenses that may occur and, if invested, shall be under sections 3925.05 and 3925.08 of the Revised Code.
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> "Any association organized under this section may collect an initial charge on each contract of insurance in accordance with its constitution and by-laws, and in addition thereto an amount not in excess of one-tenth of one per cent of the amount of each individual contract of insurance, provided that the total amount of such charges shall not exceed fifteen dollars."

Your first two numbered questions require an interpretation of the last paragraph of Section 3939.01, Revised Code, quoted above. This paragraph authorizes certain *charges* to be made by the association on "each contract of insurance."

The first question in effect is this: Does the last paragraph of Section 3939.01, Revised Code, mean that the initial charge in accordance with the association's constitution and by-laws *plus* the amount not in excess of one-tenth of one per cent of the amount of each contract of insurance shall not together exceed the sum of fifteen ($15.00) dollars, or does the proviso mean that the one-tenth of one per cent figure alone may not be more than fifteen ($15.00) dollars?

It is my opinion that the fifteen dollar limitation means that the sum total of charges on a contract of insurance may not exceed fifteen dollars. The proviso as found in Section 9593, General Code, follows a semicolon and states: "provided, however, that the total amount of such *charges* shall not exceed the sum of fifteen ($15.00) dollars." The provision, therefore, must be deemed to qualify or modify the entire paragraph dealing with charges. It will also be observed that the word "charges" is used, signifying at least two amounts. Section 9593, General Code, was not amended in the session of the General Assembly just concluded. The section did, of course, come in for *revision,* as did all the sections of the General Code, upon the adoption of the new "Revised Code," effective October 1, 1953. This revision, however, was not intended to change the legal effect or meaning of the General Code section as it has previously read. The revi-

sion was intended essentially as a streamlining of Ohio's laws, and I note that the chief revisions made in Section 9593, General Code, are punctuational in nature, and to the extent that any of these changes might deviate from the legal meaning attributable to Section 9593, General Code, the previous text Section 9593, G. C., must prevail.

The next question raised asks whether such associations are authorized to make charges for reappraising and rewriting policies or are the charges authorized by the last paragraph of Section 3939.01, Revised Code, to be assessed only once when a person becomes a member of the association, with all subsequent expense to be collected through assessments upon the members?

It must be recognized that there is no specific statutory authorization to make charges for reappraising property and rewriting policies. Unless it can be said that the one-tenth of one per cent charge may be made at any time and need not necessarily be charged initially, there could be no statutory basis for a charge sought to be collected after the contract of insurance has been entered into, for the purpose of meeting the expense of reappraising and rewriting the policy. I assume that by reappraising property already insured, and increasing or decreasing the amount of coverage only, no *new* contract of insurance is effected.

On the surface of Section 3939.01, Revised Code, formerly Section 9593, G. C., the legislative intent is at best unclarified as to whether the one-tenth of one percent charge *must* be made *initially,* alongside the amount charged in accordance with the by-laws, or whether it may be charged at a later date. After speaking of *an initial charge,* in accordance with the constitution and by-laws, the legislature which enacted Section 9593, General Code, went on and in the same breath, without even inserting a comma, allowed "in addition thereto an amount not in excess of one-tenth of one per cent * * *." Taking into consideration the nature of these associations as well as other portions of Section 3939.01, Revised Code, I must conclude that *all* charges must be made *initially* if they are going to be charged at all. Thus, it is my opinion that the phrase "and in addition thereto" does not purport to authorize a charge made subsequent to the uniform charge, but rather it means that the association may make an initial charge on the contract which shall consist of (a) the uniform or flat fee stipulated in the constitution or by-laws plus (b) an amount not in excess of one-tenth of one per cent of the amount of the individual

contract of insurance. The two figures, taken together, may not exceed fifteen dollars.

The charges made by an association in accordance with its constitution and by-laws are generally understood as constituting the membership fee of the member taking out insurance in the association. It does not necessarily follow, however, that the *other* charge, (the one-tenth of one per cent,) is therefore permitted to be made at any time. It would not be absurd at all for the legislature to break the initial charge down into two categories, i.e., a flat fee charged every member pursuant to the by-laws and another charge bearing some correlation to the amount of insurance coverage desired. It is quite possible that the one-tenth of one per cent fee is provided for in order to make allowance for possible increased expense in appraising a sizable risk as opposed to a small risk.

It will be recalled that in the earlier portion of Section 3939.01, Revised Code, the legislature has provided that the method of operation is "to assess upon and collect from each other sums of money, from time to time, as are necessary to pay *expenses* and losses." Again, in the same section the association is authorized to borrow money "for the payment of losses and expenses." In the same statute I also find a provision to the effect that surplus is to be used "in paying losses and expenses that may occur."

These provisions, therefore, indicate that expenses incidental to and arising out of the actual conduct of the business of insurance are to be met out of assessment upon all the members, or out of borrowed funds or surplus. There is no statutory definition of the terms "expenses" and "incidental purposes." A mere reappraisal of the member's property and the consequent increasing or decreasing of the amount of coverage under the policy would not necessarily work a cancellation of the existing contract. It would appear therefore that the expense of reappraising the member's property may not be met by the association's collecting an additional charge from the member already insured, but rather such an expense should be classified as an incidental expense of the association itself, to be met alongside other reappraisals, by levying an assessment from time to time on all members. It is my opinion that the legislature, in enacting the paragraph of Section 3939.01, Revised Code, dealing with charges, did not intend to open the door to frequent or numerous charges; this is to say that by reading Section 3939.01, Revised Code in its entirety, it be-

comes apparent that the charges which may be collected are in reality rather limited and are intended as *initial* charges on each contract of insurance.

Question number "d" asks in effect whether the association, upon *cancellation* of an existing policy and the prompt rewriting of a new policy which is in all material respects identical with the cancelled one, may again make the charges authorized by Section 3939.01, Revised Code.

In this area it is impossible to lay down an automatic and fixed rule of law. The most that can be said is that in those instances wherein the cancellation is made, solely as a means toward justifiying the collection of an additional fifteen dollars upon a purported new contract, such a further charge is improper. There is a substantial doubt in my mind as to whether the cancellation of one policy and the writing of a new policy essentially identical in coverage, effects a new "contract of insurance" within the meaning of Section 3939.01, Revised Code. Tearing up an existing policy only to hand the insured another policy which is in all material respects identical with the destroyed policy does not necessarily work a new contract.

Question number 2 asks whether it would "be proper for an association to refuse to issue policies affording coverage in excess of $15,000, but to issue separate policies aggregating over $15,000 and collect up to $15 in initial charges on each policy?" I presume you have in mind a situation where a member desires insurance coverage amounting say, to $60,000. If the association were to stay within the authorized charges, it could charge only fifteen dollars which is the maximum fee permitted on any contract. The association could not charge the one-tenth of one per cent charge, for that would amount to sixty dollars. Thus, the association determines that it will not issue policies in an amount greater than fifteen thousand dollars, which is the highest coverage upon which the association can realize the permissible fifteen dollar charge while using the one-tenth of one per cent rate. The association then issues to the member four policies, each in the amount of fifteen thousand dollars, and a charge of fifteen dollars is collected on each policy, thus netting sixty dollars in total charges.

It is my opinion that the legislature has determined that no matter how great the coverage may be, the maximum charge is never to exceed fifteen dollars. If, in the hypothetical situation above, the association's

division of the one risk into four separate risks, is a mere subterfuge and is designed to circumvent the state law relating to permissible charges, then the repeated charges of fifteen dollars are improper. That is to say, if each policy reads substantially the same, each insuring the same property, with only the aggregate amount of coverage ($60,000) split up and apportioned among the policies, then it could be said that the four policies *together* constitute the contract of insurance, in which event the association may charge but *one* fifteen dollars. This question, like the previous ones, can best be answered by remarking that the association must act in good faith in its dealings with its members. If the member is to successfully resist collection of more than one fifteen dollar charge, the claim would necessarily be based upon the proposition that no *new* contract of insurance has been effected; or in the case of several policies on the same property, that there is but *one* contract of insurance in effect.

It should be borne in mind that the charges allowed by Section 3939.01, Revised Code, are not the true consideration furnished by the member in exchange for the insurance coverage he obtains, since the charge is not in the nature of a premium. A member of a mutual protective association does not pay a level annual premium for his insurance protection. In becoming a member, and thereby an insured as well, the member in effect exchanges promises with all the other members that in the event of loss occurring to any of them, each agrees to be bound through an assessment, to pay his or her proportionate share of the loss. This is the essence of doing an insurance business upon the assessment plan.

I come now to your third numbered question which inquires whether mutual protective associations may insure dwellings other than farm dwellings.

In this respect I would direct your attention to the following language found in Section 3939.01, Revised Code:

> "* * * Such association *may only insure farm buildings, detached dwellings, and out-buildings,* school houses, 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 trucks, tractors, electric motors, electric appliances, lighting systems and other similar property except property used exclusively for commercial or industrial purposes.

> "Such property may be classified only for the purpose of determining and levying assessments and such property may be located within or without the limits of any municipal Corporation." (Emphasis added.)

The question is whether the legislature in employing the term "detached dwellings and outbuildings" intended to authorize mutual protective associations to insure dwellings *in general,* (including urban, suburban and farm,) or whether the term is limited to *farm* dwellings.

It should be recognized that the statute quoted, supra, is susceptible to two interpretations. Though the legislature initially enumerates "farm" buildings as insurable property, the next category is "detached dwellings and outbuildings." One possible approach to the problem is that since the legislature specifically inserted the word "farm" before the word "buildings," and it did not employ the adjective "farm" in its enumeration of "detached dwellings and outbuildings," the legislature therefore did not intend to limit mutual protective associations in their insuring of dwellings to those only which fall within the classification of farm dwellings. On the other hand, the statute might just as readily be read in such a manner that the word "farm" modifies not only "buildings" but "detached dwellings and outbuildings" as well.

It is stated in Sutherland, Statutory Construction, Vol. II, Sec. 4908, page 393, that:

> "In case the legislative intent is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases, * * * But this is so, only if the result is consistent with the legislative intent, for the maxim *noscitur a sociis* is a mere guide to legislative intent."

Applying this rule of statutory construction to the instant question, I am of the opinion that the legislature did not intend to permit mutual proective associations to insure dwellings other than farm dwellings. The sentence in question commences with the words "farm buildings," and proceeds directly to add "detached dwellings and outbuildings." While it is true that the enumeration contains such structures as churches and school buildings, the remainder of the insurable property is farm property or property intimately associated with farming, such as the grange hall. The legislature doubtless meant to direct that the association is not to insure farm dwellings unless they are detached from other farm buildings. The

word "detached" when used in speaking of an insured building in a fire policy, means "separate or not adjoining another building." Burleigh v. Gebhard Fire Insurance Co., 12 Weekly Digest, 235.

It will be observed that the legislature provided that "such property may be located within or without the limits of any municipality." This clause should not be interpreted as an authorization to insure urban dwellings. Quite frequently *farm* dwellings are situated within the limits of an incorporated village or town. It would appear that the legislative intent was to recognize the fact that many farm dwellings are located within municipalities, and that these dwellings may be the subject of insurance as well as those located in a rural area.

The nature of mutual protective associations was discussed in the case of State ex rel. v. Manufacturers' Mutual Fire Association, 95 Ohio St., 145, at page 149, as follows:

> "The officers are selected by the members, and the whole scheme contemplated by the statute seems to be an association of rather a local nature, one in which the members are likely to be more or less acquainted with the standing of each other, and not scattered all over the country or the world. The success and solvency of such an association depends in a large measure upon the standing and responsibility of its members, the promptness with which they pay their assessments, and confidence which each has that all the others will in the future continue to comply with the requirements of the association."

Thus, the widespread insuring of residences in large metropolitan centers is a concept totally foreign to the nature and origin of these associations.

The fourth question asks whether the association has any responsibility to pay to a member whose policy has been cancelled by the association for reasons other than failure to pay assessments or to abide by the provisions of the contract, his "pro rata share of the association's surplus at the time of cancellation." I am uncertain as to just what specific grounds for cancellation are comprehended by your question. Certainly there is no provision in the code requiring the association to pay a member his pro rata share of the association's surplus at the time of cancellation of the member's policy.

It should be borne in mind that mutual protective associations are non-profit organizations. The members are not stockholders. Each mem-

ber is both an *insurer* and an *insured,* i.e. each agrees to pay his proportionate share of losses occurring to other members during his membership. The surplus is accumulated for the purpose of meeting expenses and losses. In this regard I would call to your attention the case of State ex rel. v. Monitor Fire Association, 42 Ohio St., 555. The fourth paragraph of the syllabus reads as follows:

> "These sections (mutual protective associations) do not authorize the organization of corporations with a view to profit to its officers or members; therefore any plan or scheme by which profits are made or divided is unauthorized."

The Ohio Supreme Court, in referring to Section 3686 et seq., Revised Statutes, the predecessor of Section 9593, G.C. which has, in turn, become Section 3939.01, R.C., said at page 564:

> "These sections, however, do place a specific limitation on the powers of such corporations. So far as these limitations apply to the case at bar we will state them.
>
> "1. They do not authorize the organization of a corporation having a *capital stock,* and its *members* are not stockholders in that sense which subjects them to individual liability to an amount equal to his stock in addition thereto. 2. Such corporations cannot be organized with a view to *profit.* The law imposes a *trust* upon the officers for the mutual benefit of all the members, and permits insurance, the losses to be paid by specific assessments upon members. They may assess and collect upon and from each other such sums of money, from time to time, as may be necessary for incidental purposes, as well as losses which occur to its members."

As was noted earlier in this opinion, Section 3939.01, Revised Code, provides that surplus shall be used for the payment of losses.

It is therefore my opinion that a member whose policy is cancelled for any reason (save dissolution,) has no claim upon the surplus of the association, since the association is a nonprofit organization organized only to meet losses sustained by its members. I might add that one whose policy has been cancelled is no longer a member of the association and he cannot be assessed to pay a loss which did not occur during his membership.

Your last question inquires whether it is proper under the provisions of Section 3939.01, Revised Code, to insure against loss by "(a) removal

from premises endangered by fire" and "(b) acts of destruction at the time of and for the purpose of preventing the spread of fire."

In this regard Section 3939.01, Revised Code, states only that the association may insure "against loss on property in this state *caused* by fire * * *." There is no elaboration by the legislature as to what constitutes a *fire* loss.

The legislature omits any reference to "indirect" or "direct" causation. It is my opinion that these associations are authorized to insure property against loss resulting naturally or proximately from fire. The proximate cause of a result is that which in a natural and continued sequence produces the result, and without which it would not have happened. Hocking Valley Co. v. Helber, 91 Ohio St., 231. Hence, it would seem that the insurer might insure against a loss produced either immediately by fire or by fire setting other events in motion, all of which constitute a natural and continuous chain of events, each having a close causal connection with its immediate predecessor. The loss is caused as the natural and probable result of the fire. Hence your questions concerning insurance against loss by "removal from premises endangered by fire" and insurance against the risk of loss to property by reason of the destruction of same for the purpose of preventing the spread of fire, cannot be answered categorically. The association may insure against losses resulting proximately from fire.

Parenthetically, I might add that the powers of other fire insurance companies are found in Section 3925.34, Revised Code, Section 9556, G.C. That section commences:

> "All companies, organized or admitted to do business for the purpose of insuring against loss or damage by fire, may insure against any of the following: * * *
>
> "(c) All direct, indirect, or consequential loss or damage to dwelling houses, stores, and all kinds of buildings and household furniture * * * ."

It is my opinion that this section is not the measure of the powers of mutual protective associations. These associations derive their powers from Section 3939.01, Revised Code, which law is peculiar to these associations, and which law must be read as the exclusive measure of their powers. It will be noted that section 3925.34, Revised Code, supra, authorizes fire coverage on certain structures (such as "stores") which

are not included in the enumeration of insured property found in Section 3939.01, Revised Code. It will also be noted that Section 3925.34, supra, authorizes the fire companies to insure against all "direct, indirect, or consequential loss or damage." Such language is absent from the mutual protective association section. I do not believe, however, that the absence of similar language from Section 3939.01, Revised Code, indicates that these associations are *restricted* to insuring property against loss resulting solely from an actual burning. Within the mutual protective section itself is the only true answer to your question. I reiterate that it is but a question of fact, i.e., did the loss result proximately from fire?

The addition to Section 9556, General Code, now Section 3925.34, R.C., of the language regarding "direct, indirect, or consequential loss" was accomplished in 1929, 113 Ohio Laws, 54. As disclosed by the title, this was an act "to amend section 9556 of the General Code, relative to insurance companies other than life and mutual protective associations." The title indicates that the legislature did not consider its amendment to Section 9556, General Code, as affecting the powers of mutual protective associations, which associations, I understand, have never been considered by the Division of Insurance as deriving any fire underwriting powers from Section 9556, General Code. I have some doubt as to whether the addition of the words "direct, indirect, and consequential loss" means anything more than the words "caused by fire." The chief object of the amendment in 1929 was to enlarge the list of insurable property and also to enlarge the powers to include loss by hail, flood, earthquake, riot, etc.

Accordingly, it is my opinion that:

1. Mutual protective associations are authorized by Section 3939.01, Revised Code, Section 9593, G.C., to collect an initial charge on each contract of insurance, being an amount in accordance with its constitution and by-laws, plus an amount not in excess of one-tenth of one per cent of the amount of the contract of insurance, which total charge shall never exceed fifteen dollars.

2. Mutual protective associations, formed under Section 3939.01, Revised Code, Section 9593, G.C., are unauthorized to insure dwellings other than detached farm dwellings.

3. A member of a mutual protective association, whose policy has been cancelled has no right to share in the association's surplus at the time of cancellation.

4. Mutual protective associations, formed under Section 3939.01, Revised Code, Section 9593, G.C., may insure against loss resulting proximately from fire.

Respectfully,

C. WILLIAM O'NEILL

Attorney General.