INSURANCE COMMISSIONER: Insurance—County farmers mutual insurance companies are required to make annual reports on forms prescribed by the Insurance Department and to file same with the Insurance Commissioner; the applicable filing fee is $5.00.

August 20, 1942.

Mr. Frank J. Viehmann,
Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Mr. Viehmann:

I have before me your request that an official opinion issue relative to County Farmers' Mutual Fire Insurance Companies. I shall respond to each of your five questions in the order in which they appear in your request.

1

"Are Farmers' Mutual Insurance Companies (County) organized prior to 1870 A. D. compelled to report the companies financial position to the Insurance Department as of the close of business December 31 of each calendar year?"

Except as to those created by a special charter granted by the General Assembly, county farmers' mutual fire insurance companies are required to make and file annually with the commissioner of insurance such a report as he may require. The applicable provisions of the statute reads:

"The president and secretary shall annually make and file with the commissioner such report as he may require; for filing such statement, there shall be paid to the commissioner of insurance the sum of five dollars ($5.00). * * *

8 Burns' Indiana Statutes Annotated, (1940 Replacement) 39-2014.

The question that naturally presents itself is whether the quoted provision of the act is applicable to the companies com-
prehended by your question. I am of the opinion that it is applicable to all but the companies organized by special charter. The statutes amply support such a conclusion:

“No existing insurance company shall be affected by this act, unless it shall elect to conduct its business in compliance therewith and shall so order, by a resolution adopted by its board of directors or its members, certified by the secretary and filed with the commissioner and approved by him, and the commissioner shall be entitled to collect a fee of five dollars ($5.00) for such service; Provided, That no insurance company now organized in the state and transacting principally the business mentioned in this act shall affect any insurance in this state after January 1, 1925, unless it shall have elected to transact its business under this act or under the provisions of Chapter 140 of the Acts of 1915; * * * Provided that any insurance company or association organized prior to 1870 shall not come under the provisions of this act, unless it so elect.”


It should be noted in passing that Chapter 140 of the Acts of 1915 (p. 571) does not deal with county farmers’ mutual fire insurance companies.

2

“Are Farmers’ Mutual Insurance Companies organized under the various enactments since 1870 also required to so report?”

This question must be answered in the affirmative. The applicable provisions of the statute have been set forth under “1” supra.

3

“Upon what basis should the Department impose a fee for the filing of such annual report if mandatory; as stipulated in the 1935 Law or as provided by the law under which they are organized which shows a variance of $5.00 to $20.00?”
The $5.00 fee is applicable. Section 272a, Chapter 162 Acts of 1935 (pp. 787-788) indicates that the Indiana Insurance Code of 1935 is not controlling:

“No existing insurance company shall be affected by this act, unless it shall elect to conduct its business in compliance therewith and shall so order, by a resolution adopted by its board of directors or its members, certified by the secretary and filed with the commissioner and approved by him, and the commissioner shall be entitled to collect a fee of five dollars ($5.00) for such service: Provided, That no insurance company now organized in the state and transacting principally the business mentioned in this act shall affect any insurance in this state after January 1, 1925, unless it shall have elected to transact its business under this act or under the provisions of Chapter 140 of the Acts of 1915; * * * Provided that any insurance company or association organized prior to 1870 shall not come under the provisions of this act, unless it so elect.”


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“Are Farmers’ Mutual Insurance Companies organized under the various enactments since 1870 also required to so report?”

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“Upon what basis should the Department impose a fee for the filing of such annual report if mandatory; as stipulated in the 1935 law or as provided by the law under which they are organized which shows a variance of $5.00 to $20.00?”
The $5.00 fee is applicable. Section 272a, Chapter 162, Acts of 1935 (pp. 787-788) indicates that the Indiana Insurance Code of 1935 is not controlling:

"The provisions of this act shall not apply to any farmers' mutual fire insurance company, nor shall any provision of this act be construed as repealing any provision of existing law applicable to the companies and associations referred to in this section."

8 Burns' Indiana Statutes Annotated, (1940 Replacement) 39-5026.

The applicable statute provides:

"* * * for filing such statement, there shall be paid to the commissioner of insurance the sum of five dollars ($5.00)."

8 Burns' Indiana Statutes Annotated, (1940 Replacement) 39-2014.

"Are County Farmers' Mutual Fire Insurance Companies organized under any law of the State permitted to make such reports upon forms selected and designated by the Company or shall such report be made only upon such form prescribed by the commissioner of insurance?"

County farmers' mutual fire insurance companies organized under the general laws of this state are required to make annual reports in such manner as the commissioner shall require. Therefore, if the commissioner of insurance requires the annual report to follow a designated form the company is not at liberty to disregard such form and to substitute a report dictated by its whim or caprice. The applicable statute states:

"The president and secretary shall annually make and file with the commissioner such report as he may require; * * *."  

8 Burns' Indiana Statutes Annotated, (1940 Replacement) 39-2014.
In passing it may be well to observe that if any insurance company files a report in a manner materially deviating from the standard prescribed by the Insurance Commissioner, that fact should be plainly revealed by the Insurance Department in any use made of such report or in answering inquiries relating to such company. The use of a form different from that required by the Insurance Commissioner will doubtless be adjudged a material fact by insurers generally, and it is not within the province of the Insurance Department to deprive the insuring public of such significant information.

"Does the Commissioner of Insurance have the power to make an examination of the books and affairs of such companies?"

The Commissioner has such power. The statute provides:

"* * * The commissioner may, at any time, examine the books and affairs of such company. If the commissioner shall find that such company is not paying its losses and otherwise complying with law, or is conducting its business in a manner detrimental to the interests of the policyholders or the public, he shall order the levy of an assessment, if necessary, or order the company to cease issuing new policies or take such other action as shall best protect the interests of the insured. The expense of making any such examination shall be paid by the company examined."

8 Burns' Indiana Statutes Annotated, (1940 Replacement) 39-2014.