
January 31, 1936.

Hon. Harry E. McClain,
Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Sir:

I have at hand your letter of January 24th and enclosure, requesting my opinion as to whether or not the Lynch Coal Operators Reciprocal Association is subject to the provisions of Chapter 323 of the Acts of 1935, which establishes a rating bureau for the fixing of premium rates for workmen’s compensation insurance in the State of Indiana.

It appears that the Lynch Coal Operators Reciprocal Association was formed under the Workmen’s Compensation Act of 1915 and acts amendatory thereof and supplemental thereto, and particularly under that provision of said Act (re-enacted as a part of Section 75, Chapter 172, Acts of 1929) which provides as follows:

"For the purpose of complying with the provisions of section sixty-eight hereof, groups of employers are hereby authorized to form mutual insurance associations or reciprocal or inter-insurance exchanges subject to such reasonable conditions and restrictions as may be fixed by the industrial board. Membership in such mutual insurance associations or reciprocal or inter-insurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with section sixty-eight hereof: * * *" (Section 40-1703, Burns 1933 Indiana Statutes.) (My italics.)

Briefs and written opinions of counsel for the reciprocal association in question, which are contained in the file submitted in connection with your request for an opinion in the premises, advance two separate theories in support of their contention that the association is not subject to the provisions of Chapter 323, Acts 1935, supra. These theories are as follows:
1. That an association such as the one under consideration, and the business thereof, is not within the language or purview, generally, of the 1935 Act.

2. That such associations, and the businesses conducted by them, are expressly exempted from the operation of said Act by reason of the provisions of Section 26 thereof.

In my opinion the first theory advanced by counsel is without merit. There can be no question but that the title of Chapter 323, supra, is sufficiently comprehensive to include subjection of such class of associations to the provisions thereof, provided they are included within the language of the body of the Act. In the latter connection, it will be noted that Section 1 provides that the Act shall be applicable to "all persons, firms, partnerships, corporations, associations and systems * * * now or hereafter authorized to transact the business of making workmen's compensation insurance in the State of Indiana." While it must be conceded as well settled that reciprocal associations are not legal entities, but merely places where the individual subscribers exchange contracts of indemnity through their attorneys-in-fact; nevertheless it seems obvious that if the association itself is not an "association" or "system" transacting the business of "making workmen's compensation insurance" within the meaning of Section 1, supra, then certainly the individual subscribers and members of such association are "persons" engaged in making such insurance. It is unnecessary to decide whether the insurance is being made by the association itself or by the individual subscribers, since the language of Section 1 would make the Act applicable generally to the business in question, in either event. Moreover, in spite of the contention of counsel to the contrary, it appears from the information furnished by the attorney-in-fact that the business of the Lynch Association is conducted on a "rate" or "premium" basis, although provision is made both for refunds and for deficiency assessments.

The second theory advanced, however, as set out above, has considerably more merit. Section 26 of Chapter 323, supra, specifically provides as follows:

"Nothing in this act shall be construed to annul, restrict, or in any manner interfere with the licensing
and supervision of mutual insurance associations and reciprocal associations now organized or to be hereafter organized solely for the writing of workmen’s compensation insurance as now provided under the workmen’s compensation law of Indiana.”

In determining whether the foregoing provision exempts the Lynch Association and similar reciprocals organized under the Workmen’s Compensation Act from the terms of Chapter 323, supra, requiring membership in the workmen’s compensation insurance rating bureau and observance of minimum premium rates, classifications, etc., fixed by said bureau, it becomes necessary to determine whether the application of such provisions of said Act to the associations in question would “annul, restrict, or in any manner interfere with the licensing and supervision” of such associations by the industrial board, as now provided under the workmen’s compensation law.

The workmen’s compensation law, as we have already observed, authorizes the formation of such reciprocal association “subject to such reasonable conditions and restrictions as may be fixed by the industrial board.” While no specific authority is given the industrial board to fix or otherwise supervise the premiums or rates to be charged, nevertheless the foregoing provision confers upon the board rather broad powers of supervision and regulations, limited only by the reasonableness of the conditions and restrictions to be imposed by such board. Pursuant to this grant of authority, certain conditions and restrictions were formally adopted by the industrial board on June 7, 1929. These conditions and restrictions were in effect at the time of the enactment by the Legislature of Chapter 323, Acts of 1935, supra, and it is reasonable to assume that the Legislature took cognizance of the same when it referred, in Section 26 of said Act, to “the licensing and supervision * * * of reciprocal associations * * * as now provided under the workmen’s compensation law of Indiana."

Section V of the conditions and restrictions imposed by the industrial board upon the formation of reciprocal associations, as referred to above, provides in part as follows:

“Each of such * * * Reciprocal Insurance Association (s) shall maintain in the State of Indiana at all
times during each fiscal year, as a reserve fund available for the payment of liabilities under its policies, a sum in cash or assets acceptable to the Industrial Board equal to fifty per cent of the aggregate gross annual premiums collected from and credited to the accounts of the employers forming such association on policy contracts having one year or less to run, and pro rata of the amount collected on policy contracts having a longer period to run. ** ** Said reserve fund on hand shall at no time be less than twenty-five thousand dollars, and, if at any time fifty per cent of the aggregate gross annual premiums, so collected and credited, shall not equal that amount, then the employers forming such association shall within thirty days make up and pay into said reserve fund the deficiency. ** ** In order to make up any such deficit in the said reserve fund, each of said employers shall immediately advance and pay into said fund his proportionate part of said deficit, based upon his original estimated premium. When the actual premiums for the year have been ascertained, then such payments by the employers to make up any such deficit shall be adjusted upon the basis of their actual premiums for the year. ** ** To the end that the reserve fund herein provided for shall be created and maintained every such ** ** reciprocal insurance association shall charge upon the risks covered by the insurance contracts exchanged among the subscribers of said association, premium rates adequate to create and maintain such reserve fund, and, for a failure so to do, the Industrial Board may revoke the certificate of such association, authorized by Section X hereof.” (My italics.)

Section VIII of the conditions and restrictions so adopted requires a quarterly report from the attorney-in-fact for the reciprocal association, setting out a list of the employers forming such association, the number of employees of each employer, maximum amount of indemnity assumed on any single employer, total amount of indemnity assumed on all employers, net worth of each employer, total net worth of all employers, total amount of unpaid determined liabilities (exclusive of those upon which special deposits have been made),
total reserve fund on hand to pay such liabilities, and a list of the definitely fixed liabilities for which special deposits have been made. Section IX requires an annual report from the attorney-in-fact, showing the financial condition of the association, and furnishing such additional information as may be required to show total premiums collected, total losses, total losses paid, total losses unpaid, total amount of special deposits for payment of losses, total amount returned to employers, and total amount retained for expenses. Said section likewise subjects the affairs and assets of the association to examination by the industrial board at any time.

Comparing the supervisory powers and duties of the industrial board with relation to such reciprocal associations, as provided by Section 40-1703, Burns 1933 Indiana Statutes, supra, and by the foregoing conditions and restrictions, with some of the powers and duties conferred upon the rating bureau set up under Chapter 323, Acts of 1935, supra, it will be found that Section 4 of the latter provides:

"The duty of such bureau shall be the establishment of minimum premiums to be charged for workmen’s compensation in the State of Indiana."

Section 10 of said Act provides:

"The bureau under the supervision of the department of insurance and to its approval shall arrange industries of this state into classes for compensation insurance, and make inspection of compensation risk or risks, and apply thereto the schedule or merit rating system; and establish charges and credits under such system as are approved by the insurance commissioner; and to make reports showing all facts affecting such risks to the department; and make any and all other reports required by the department for the furtherance of the provisions of this Act."

Section 13 of said Act provides:

"The department shall approve a minimum adequate premium rate for each classification under which workmen’s compensation insurance is written. No person, firm, company, or corporation, lawfully writing workmen’s compensation insurance wholly or in part, shall use a premium rate less than that approved by the department."
It seems obvious, from the excerpts quoted from the conditions and restrictions adopted by the industrial board relative to formation or reciprocal associations such as the Lynch Association, that the board had legally assumed general supervision of the financial affairs of such associations, and of the minimum premiums to be charged by them. It seems equally obvious that application of the provisions of Chapter 323, Acts of 1935, supra, to such associations would subject them to a similar and conflicting supervision by the rating bureau. Consequently, subjecting such associations to the provisions of said Chapter 323 could not help but "annul, restrict, or * * * interfere with the licensing and supervision" of the same by the industrial board under the provisions of the Workmen’s Compensation Act.

It is my opinion that Section 26 of Chapter 323, Acts of 1935, exempts the Lynch Coal Operators Reciprocal Association and kindred associations from the operation of said Act.

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PUBLIC INSTRUCTION, OFFICE OF SUPT. OF: Right of minor child to establish residence for school purposes apart from residence of parents.

January 31, 1936.

Hon. Grover Van Duyn,
Assistant Superintendent
of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following questions:

“What is meant by emancipating a child?
“May a parent emancipate a child to another individual for the purpose of re-establishing the child’s residence for school purposes?”

Since the above questions apparently relate to school problems, I think it is desirable to make some preliminary observations. In the first place it is the duty and obligation of every school corporation in the state to furnish facilities