



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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August 27, 1957

Hon. William A. Harrison
Commissioner of Insurance
State Board of Insurance
Austin 14, Texas

Opinion No. WW-235

Re: Whether the Tri-County Mutual Insurance Company was organized and operating as such on May 22, 1953, and thereby entitled to the industrial exemption contained in Article 17.02 of the Insurance Code. And related question.

Dear Mr. Harrison:

Your request for an opinion is based upon the following facts:

Article 17.02 of the Insurance Code exempts county mutual insurance companies "organized and operating as a county mutual fire insurance company on May 22, 1953, whose business is devoted exclusively to the writing of industrial fire insurance policies. . ." from the provisions of S. B. 107, Acts 53rd Legislature, Regular Session 1953, Chapter 196, Page 540 and S.B. 15, Acts 54th Legislature 1955, Chapter 117, Page 413. On March 12, 1953, the Board of Insurance Commissioners issued a temporary permit to Tri-County Mutual Insurance Company to organize a county mutual fire insurance company under the provisions of Chapter 17, Insurance Code. This permit granted the company authority to solicit and receive applications for insurance and collect premiums thereon and issue receipts therefor as provided by statutes, but not to issue policies of insurance or pay claims.

Thereafter, on June 4, 1953, and based upon affidavits, general interrogatories, policy forms, rates and applications dated and file marked June 2 and June 4, 1953, the Board of Insurance Commissioners granted to the Tri-County Mutual Insurance Company a certificate of authority to pursue the business of a county mutual fire insurance company in accordance with the provisions of Chapter 17, Insurance Code.

Between the issuance to the company of the temporary permit and permanent certificate of authority, S. B. 107 became effective on May 22, 1953, and made certain financial requirements of county mutual insurance companies. However, S. B. 107 contained the following exemption:

"The provisions of this Act shall not apply to any county mutual insurance company now organized and operating as a county mutual fire insurance company whose business is devoted exclusively to the writing of industrial fire insurance policies.

.. ."

Thereafter, on June 20, 1954, the company was issued a certificate of authority to transact the business of an industrial county mutual fire insurance company devoted exclusively to the writing of industrial fire insurance policies.

However, on July 10, 1955, the company was issued a certificate of authority only to continue the business in force as of December 31, 1954, because of failure to qualify under the provisions of S. B. 107.

This certificate of authority of July 10, 1955, was issued in compliance with the provisions of S. B. 107 prior to the effective date of S. B. 15. S. B. 15, which became effective September 7, 1955, contained the exemption which is of primary concern to this request and it is as follows:

". . . Provided, however, that neither the provisions of this Act nor the provisions of Senate Bill No. 107, Acts of the 53rd Regular Session, Texas Legislature, 1953, effective May 22, 1953, shall apply to any county mutual insurance company organized and operating as a county mutual fire insurance company on May 22, 1953, whose business is devoted exclusively to the writing of industrial fire insurance policies. . . ." (Now found in Article 17.02 of the Insurance Code).

We quote from your opinion request the following:

"The Tri-County Mutual Insurance Company was not issued a certificate of authority for the year ending May 31, 1957. The company has made application for a certificate of authority under the industrial exemption contained in S.B. 15 for the year ending May 31, 1958. There appears to be no question that on September 7, 1955, the effective date of S.B. 15, Tri-County was devoted exclusively to the writing of industrial business. However, there is some question as to whether the company is entitled to a certificate of authority under the industrial exemption contained in S.B. 15 because it must have been 'organized and operating as a county mutual fire insurance

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company on May 22, 1953'. The company received its first certificate of authority on June 4, 1953, after having received a temporary permit to organize a county mutual fire insurance company on March 12, 1953.

"We respectfully request your opinion as to whether the Tri-County Mutual Insurance Company was organized and operating as a county mutual fire insurance company on May 22, 1953, and thereby entitled to the industrial exemption contained in S. B. 15, (Article 17.02)?

"We further request your opinion as to whether there is any sort of waiver, estoppel, or bar against the State Board of Insurance from raising this question at this time due to the fact that the Board of Insurance Commissioners on June 4, 1953, and July 20, 1954, issued to the company unrestricted certificates of authority after the effective date of S. B. 107, May 22, 1953."

The scheme of organization of county mutual insurance companies provided in Chapter 17 of the Insurance Code at the time the Tri-County Mutual Insurance Company obtained its temporary permit was as follows: The Board of Insurance Commissioners issued a temporary permit to the applicant to allow the solicitation of enough policies of insurance to satisfy the minimum requirements of the Code. When these minimum requirements had been satisfied, then, and not until then, the charter could be granted, the company would be fully organized and could operate as a county mutual insurance company. See Articles 17.02-17.05 of the Insurance Code, before the amendatory act of 1953. The temporary permit issued to Tri-County Mutual Insurance Company on March 12, 1953, was only for this purpose of organization. Its certificate of authority to operate as a county mutual fire insurance company was not issued until June 4, 1953, after the effective date of S. B. 107, May 22, 1953. Therefore, the company was not organized and operating as a county mutual fire insurance company on May 22, 1953.

Your second question must also be answered in the negative. The issuance of certificates of authority to the company in such form as those of June 4, 1953, and July 20, 1954, was not authorized by statute due to the fact that apparently the company had not qualified under the provisions of S. B. 107 and, as stated above, was not organized and operating on May 22, 1953. Normally no estoppel will arise against the State from the exercise of its regulatory powers, and certainly there would be none as a result of unauthorized actions of a State board. Weatherly v. Jackson, 123 Tex. 213, 71 S. W.2d 259 (1934); Carruthers v. Rogan, 96 Tex. 113, 70 S. W. 18 (1902).

SUMMARY

The Tri-County Mutual Insurance Company was not organized and operating as a county mutual fire insurance company on May 22, 1953, so as to be entitled to the industrial exemption contained in Article 17.02 of the Insurance Code. There is no estoppel against the State Board of Insurance from raising this question at this time.

Yours very truly,

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By 

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FWE:pc

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