MAINE STATE LEGISLATURE

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PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS

FOR THE TWO YEARS

JULY 1, 1928 - JUNE 30, 1930

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1929-1930

STATE INSURANCE IN MUTUAL COMPANIES

May 1, 1929

Honorable Governor and Council,
State House,
Augusta, Maine
Gentlemen:

From such examination as I have been able to make since your inquiry of yesterday, I am of the opinion that the Governor and Council may take out casualty insurance in mutual companies. This is a proper exercise of a discretion not forbidden by law. The only restrictions are practical: the need for the insurance should be clear, the company should be authorized to do business in Maine, should be strong, and the policy should be so worded as to give the state and its employees actual protection.

The power of the State in such cases does not seem to have come up for adjudication, but I find that the analogous question of the power of a municipality has been ruled on favorably in several jurisdictions. The general principle seems to be this: unless a statute specifically prohibits mutual insurance, the express or implied power to insure may be exercised by securing mutual insurance.

In New Jersey this was decided by the Supreme Court in French v. City of Millville, 66 N. J. L. 382 (1901). There the constitution of New Jersey prohibited municipalities from loaning money or credit or becoming directly or indirectly the owner of corporation or association stock or bonds. The court said in part:

> "The scheme of mutual insurance in such associations does not vest upon the members any liability which municipal corporations may not, with reasonable safety, assume, for the limit of obligation is always fixed at the time the insurance is obtained, and is rarely enforced beyond what would be charged for insurance on the non-mutual plan.
>
> "By giving its premium notes the city did not loan its credit to the company. Its promises were made for a consideration of value beneficial to itself, and like other assets of the company, they were purchased not borrowed."

In Kentucky the same was decided in 1921 of a board of education. In this case, Dalzell v. Bourbon County Board, 193 Ky. 171, an injunction against mutual insurance was refused. The court held that: the fact that a person holding a policy is made a member of a mutual insurance company does not prevent a school district or other public corporation from becoming a policy holder in such mutual company; and the fact that a policy holder in a mutual insurance company becomes subject to an assessment liability does not prevent a school district or other public corporation from becoming a policy holder.

In Massachusetts the insurance commissioner in 1923 ruled that a municipality may take out mutual insurance, and that the selectmen can properly act as agents to effect the insurance and one of them may serve as the "member" of the mutual company under the mutual insurance company law which permits a corporation subscribing for mutual insurance to appoint a person to represent it as a member of the company. The commissioner said:

> "A contract of insurance with a mutual company differs from a contract with a stock company merely in that the policy holder is a member of the company, entitled to a vote in corporate meetings, having the right to participate in profits and contingent liability to assessment. These functions are not necessarily inconsistent with the nature of a municipal corporation."

The Attorney General of Massachusetts also ruled in 1917 that a municipality might become a member of a mutual liability insurance company. (Attorney General's Report, Mass. 1917, p. 68.)

At the present session of the Massachusetts Legislature, the express power to take out mutual insurance was conferred upon cities, towns and other political subdivisions. This statute was passed because a minor state official had ruled that the contingent liability under an assessment policy was contrary to a statute prohibiting the incurring of liability in excess of appropriations. (P. L. 1929, c. 156). This statute expressly says:

> "The contingent mutual liability of any city or town or other political subdivision of the Commonwealth becoming a member of such a company shall not be deemed a liability within the meaning of Section thirty-one of Chapter forty-four."

In Indiana a similar decision was made in Clark School Township v. Home Insurance Co., 20 Ind. App. 543 (1898).

The Attorney General of Ohio gave a similar opinion on October 16, 1928, also with reference to boards of education. A previous Attorney General of that state had ruled to the contrary in opinions on April 28, 1911, and December 20, 1911, and in 1912 (Atty. Gen. Rep. Ohio, 1911, pp. 246, 1690, 1912 p. 233). These rulings were reversed because of an amendment to the Ohio Constitution passed in 1912, which shows an intent to remove former prohibitions against such insurance. The Attorney General in the recent decision comments on the fact that since 1912 the Ohio laws regulating mutual companies have been stiffened. It seems fairly clear that he would have disagreed with his predecessor, even had the constitution not been amended. He says, on general principles:

> "Business men generally do not consider the carrying of insurance in these companies as being at variance with sound business principles. The control and management of school property is

> the province of boards of education. In the absence of any specific directions as to the manner of performing these duties, such boards are vested with full discretion limited by law, and they cannot be said to have abused that discretion when they follow what is generally conceded to be sound business practice in the management of property similarly situated."

I am annexing the full text of the various decisions above referred to.

Very truly yours,
CLEMENT F. ROBINSON
Attorney General

CROSS-CONNECTIONS

August 11, 1930

Dr. Clarence F. Kendall,
Commissioner of Health,
Augusta, Maine
Dear Dr. Kendall:

You inquire regarding the power of the State Department of Health to promulgate the regulations which you enclose regarding cross-connections between public and industrial water systems.

In my opinion:

1. Your department has the power to make regulations on this subject applicable to private industries.
2. Proposed regulations should be recast in some respects.
3. Enforcement of the regulations may involve invoking the jurisdiction of the Public Utilities Commission.

1. *The power to make regulations*

On their face, these regulations being obviously for the protection of the public health, your department has the power to make and promulgate them under the general provisions of P. L. 1917, Chapter 197, Section 4, P. L. 1919, Chapter 172, as amended by P. L. 1923, Chapters 116, 221. The proposed regulations are not plumbing regulations under Section 112 of the Health Law interpreted in the recent decision of State v. Prescott.

Your power to make such regulations is, however, by the Court's decision in State v. Prescott limited by the principle that you cannot make regulations in cases where jurisdiction has been conferred elsewhere. I find no statute conferring jurisdiction to make such regulations on any other agency of the government. By P. L. 1917, Chapter 98, passed by the same Legislature which adopted the first of the legislation previously referred to:

> "The Public Utilities Commission shall consult with and advise the authorities of cities and towns and persons and corporations