

## Opinion No. 14-1239

May 28, 1914

**BY:** IRA L. GRIMSHAW, Assistant Attorney General

**TO:** State Corporation Commission, Santa Fe, New Mexico.

### **INSURANCE.**

State Farmers Mutual Hail Insurance Company of Minnesota is a company doing business upon a mutual casualty assessment plan.

### **OPINION**

{\*101} We have examined the Hail Insurance Policy and the by-laws attached thereto of the State Farmers Mutual Hail Insurance Company of Minnesota, with a view of determining whether the insurance therein provided is of the mutual kind or not. We have concluded that it is a company doing business upon a mutual casualty assessment plan. A recitation in the face of the policy so states. The policy provides, in effect, that the United States shall be divided into districts. Each district constitutes a department. Each person subscribing in a Hail Insurance Policy becomes a member of that district and a member of the department of which his territorial district forms a part. He thereby becomes the insured and an insurer. He is obliged in the first instance to pay an agent's fee of \$ 2.00, which is not unusual and also a fee of one per cent of the amount insured as a surveying fee.

The by-laws of the company in force at the time of the execution of the policy and such by-laws as may hereafter be enacted are made a part of the contract. The courts have held that such contracts are legal and that by-laws subsequently enacted are binding upon the insured. The insured's obligations may be materially increased by such a contract. The insured is not entitled to any indemnity for loss under this contract, unless the loss exceeds five per cent of the total crop insured. These losses are sustained and paid by the district divisions and are borne pro rata by the members thereof. The money to pay these losses is raised by premiums and by assessments made by the Board of Directors of the company. To the assessment is added one per cent for the purpose of forming a Guaranty Surplus Fund. The contract does not place a limitation upon the amount which may be assessed against a member of this concern. In the event that the premiums, assessment moneys and the proportion of the Guaranty Surplus Fund found credited to the district is insufficient to pay the losses of the district, the losses are pro rated. In such an event it is quite plain that an insured may not receive the full face value of his policy, or of his loss in the event of a general loss within the district.

Because of the fact that there is no limitation upon the assessments which might be made against the district members, and because of the stringent waivers and limitations contained in the policy, it is my personal opinion that the farmer in New Mexico is not

{\*102} receiving anything approximating absolute security in the event of a loss by hail under this policy.