

**OPINION**  
**48-96**

October 14, 1948           (OPINION)

INSURANCE

RE:   Terms of Existence of Companies

I have your letter of October 11 relative to the term of existence of the Griggs County Mutual Fire and Lightning Insurance Company and the Merchants National Mutual Fire Insurance Company, together with copies of the articles of incorporation of these two companies.

You state that you have written to these companies informing them that their term of existence has expired.

You enclose correspondence relative to this matter, including a letter from A. I. Johnson, attorney for the Merchants National Mutual Fire Insurance Company, of Fargo, North Dakota.

The real question involved, as I see it, is whether or not these companies have a perpetual existence or whether the term of existence expired at the end of thirty years. The articles of incorporation of the Merchants National Mutual Fire Insurance Company were approved by the attorney general on April 1, 1904 and Article 1 thereof provides that its term of existence shall be for a period of thirty years.

It appears that the attorney for the company is relying on section 26-1405 N.D.R.C. 1943. This section appears as 4881a5 of the 1925 Supplement and is a part of chapter 165 of the session laws of 1919. This section makes no reference to the length of the term of existence of insurance companies incorporated thereunder.

However, the section 26-1406 R.C. 1943, which appears as section 4871 of the 1925 Supplement, provides that "the articles of incorporation of a company organized under the provisions of this chapter may be amended, its term of corporate existence extended, and its by-laws adopted, amended, or repealed at any annual meeting of the company, or at any special meeting called for that purpose, by the affirmative vote of two-thirds of the members voting on the proposition."

In view of the provisions of the section quoted, particularly the phrase "its term of corporate existence extended," it would appear that the charter of the company expired thirty years after its organization, unless a renewal was had thereafter.

While there may be some doubt as to whether or not these companies have continued existence, I believe that in order to be safe, these companies should take some action for a renewal of their charters or for reincorporation.

If these companies have been operating after the expiration of the thirty year period, it is my opinion that any contracts issued are valid, since these companies have at least been operating as de facto insurance companies.

P. O. SATHRE

Attorney General