



STATE OF KANSAS

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October 24, 1978

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ATTORNEY GENERAL OPINION NO. 78-345

The Honorable Fletcher Bell  
Commissioner of Insurance  
Kansas Insurance Department  
1st Floor - State Office Building  
Topeka, Kansas 66612

Re: Insurance--Mutual Hail Insurance Companies--Validity  
Of Certain Provisions Of Chapter 200, Laws Of 1929  
(K.S.A. 40-1502)

Synopsis: 1929 House Bill No. 421 did not contain amendment as passed by both House of Representatives and the Senate when governor signed it. Such amendment did not become effective as a part of the final act.

\* \* \*

Dear Mr. Bell:

The opinion of this office has been requested concerning certain language originally incorporated in 1929 House Bill 421 as passed by both houses of the legislature but which was apparently omitted in the final enrolled copy of the bill signed by Governor Clyde M. Reed. Consequently this bill now codified as K.S.A. 40-1502 has read thus for nearly fifty years:

"Such persons so desiring to incorporate shall file in the office of the commissioner of insurance a statement signed and duly acknowledged by all of the incorporators stating their purpose of forming a company as expressed in the first section of this

The Honorable Fletcher Bell  
Page Two  
October 24, 1978

article, for the transaction of the business of hail insurance, the number of acres of growing grain owned by each, the amount of insurance subscribed for, the description and location of the grain, the address of each subscriber, and a certified copy of the charter. The charter shall set forth the corporate title of the organization, which title shall include the word 'mutual,' the place of business, the home or general office thereof, the intended duration of the company, the directors chosen, and the specific purpose for which the organization is formed. No certificate of authority shall be issued by the commissioner of insurance [\*] until there shall have been deposited with the state treasurer by said company cash or securities in an amount not less than twenty thousand dollars [\*] (\$20,000), which [\*] shall not be withdrawn until all claims for hail damage be paid in full." [Asterisks added.]

Certain amendatory language was inserted by Senate committee recommendation and passed by both houses of the legislature but which was never signed by the governor. Specifically then you ask whether those provisions amending the original bill which were passed but not signed by the governor still have the force and effect of law.

A review of the legislative history of 1929 House Bill 421<sup>1</sup> discloses that the House amended the bill upon recommendation of the committee of the whole and then passed and messaged it to the Senate as amended.<sup>2</sup> The Senate pursuant to the report from the Senate Committee on Insurance approved the following recommendation (which is keyed for your convenience to the inserted asterisks in the above quoted language of the original bill):

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1. A copy of 1929 House Bill 421 as originally introduced is attached hereto as Exhibit A.
  2. See, 1929 Journal of the House 498, 520.

The Honorable Fletcher Bell  
Page Three  
October 24, 1978

"that it be amended in section 1, line 17, after the word 'insurance' by inserting the words 'to any such company incorporated subsequent to the date upon which this act becomes effective'; also, in section 1, line 20, after the word 'dollars' and before the word 'which' by inserting the word 'of,' and after the word 'which' by inserting 'all or any part may be used in settlement of approved claims, and when so used shall be replaced within ninety days so that said deposit shall be maintained as a reserve fund at all times'; and that the bill be passed as amended."<sup>3</sup>

The Senate passed the bill per<sup>4</sup> the committee recommendation and reported it back to the House.<sup>5</sup> The House thereafter passed the bill as amended and forwarded it to the governor for his signature.<sup>5</sup> Governor Reed signed 1929 H.B. 421 into law March 16, 1929.

However, it appears that the copy of 1929 H.B. 421 as signed by Governor Reed does not contain the amendment recommended<sup>6</sup> by the Senate Committee on Insurance and passed by both houses.<sup>7</sup> As far as can be determined the amendment apparently was never even engrossed into the bill. Thus the issue here presented is what effect does this omitted amendatory language have on the statute as it is presently published.

Article 2, Section 14 of the Kansas Constitution provides in pertinent part thus:

"(a) Within ten days after passage, every bill shall be signed by the presiding

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3. See, 1929 Journal of the Senate 411.

4. *Id.* at 433.

5. See Journal of the House 624.

6. *Id.* at 657.

7. See copy of enrolled 1929 H.B. 421 as approved and signed by Governor Reed attached hereto as Exhibit B.

The Honorable Fletcher Bell  
Page Four  
October 24, 1978

officers and presented to the governor. If the governor approves a bill, he shall sign it. . . ."

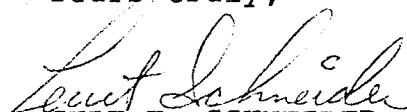
Applying the provisions of this section, the Kansas Supreme Court in a case with similar factual circumstances observed:

"A bill was introduced in the house and passed that body; in the senate it was amended; the house acceded to the amendment; when it was enrolled and signed by the officers of each house and signed by the governor it did not contain the amendment, held, the constitution requires bills passed by the legislature to be submitted to the governor for his signature, and where a bill was submitted to the governor without an amendment which had been adopted by both houses the amendment did not become effective as a part of the final act." Syl. ¶ 2.

*State ex rel., v. Robb*, 163 Kan. 502, 183 P.2d 223 (1947).

Accordingly, it appears clear from the above quoted opinion that the amendment to 1929 H.B. No. 421 approved by both houses of the legislature but which was not a part of the bill signed by the governor did not become effective as a part of the final act and is thus of no legal force or effect.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj