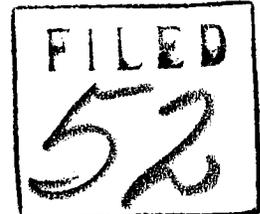


**INSURANCE:** A fire insurance company, subject to Missouri's fire Rating Act, maintaining its own public rating record, and choosing to establish its own audit division to audit its daily reports, is amenable to periodic examination by the Superintendent of the Division of Insurance to insure compliance with the Rating Act, or, in the alternative, may be directed by the Superintendent to order and instruct its agents to forward each day copies of their daily reports to the Division of Insurance where they may be checked against the public rating record of the company in order to determine if deviation or discrimination in rates is shown in the light of such public rating record.

August 28, 1959



Honorable C. Lawrence Leggett  
Superintendent  
Division of Insurance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Leggett:

This opinion is rendered in reply to your inquiry reading as follows:

"An insurance carrier has objected to using the facilities of the Missouri Audit Bureau which was established in 1917 at the direction of the Superintendent of Insurance. The Bureau is independent of the Division of Insurance and audits fire and allied lines daily reports to determine whether subscriber companies have complied with their public rating records filed with the Division of Insurance.

The insurance carrier involved maintains its own public rating record with this Division, and desires to audit its own daily reports. I would like your opinion whether the law permits this."

The foregoing inquiry contemplates fire insurance companies and requires a construction of various provisions of Missouri's fire Rating Act found at Sections 379.315 to 379.415, RSMo 1949, as amended.

An illuminating statement concerning the circumstances under which the Missouri Audit Bureau came into existence, and its functions, is found in State ex inf. Taylor v. American Insurance Company, 355 Mo. 1053, 1.c. 1070-1072, 200 S.W.(2d) 1.

Section 379.350, RSMo 1949, provides as follows:

"No company or other insurer or agents shall directly or indirectly, by any special rate,

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tariff, drawback, rebate, concession, device or subterfuge, charge, demand, collect or receive from any person, persons or corporation any compensation and premium different from the rate or premium properly applicable to the property so rated, as indicated by its public rating record, and no company or other insurer shall discriminate unfairly between risks of essentially the same hazard and substantially the same degree of protection."

In State ex inf. Taylor v. American Insurance Company, supra, the Supreme Court of Missouri referred to Section 5979, RSMo 1939, now found unchanged at Section 379.350, RSMo 1949, quoted above, and disclosed the use made of the Missouri Audit Bureau in the following language found at 355 No. 1053, l.c. 1071:

" \* \* \* Section 5979 requires all insurance policies to be written at a rate as indicated by its public rating record. As we view the situation the State Insurance Superintendent has been and is using the Missouri Audit Bureau as an instrument for enforcing this statute, that is, Sec. 5979. \* \* \* The object accomplished by the activities of the Audit Bureau may be the forcing of all companies to charge the approved rates and use the forms and binders as approved and filed. But that is a compliance with the statute and not a violation. The record shows that the Audit Bureau uses the public rating record of the Missouri Inspection Bureau and the rating record as filed in the Insurance Department by the various companies as a check against the daily reports filed by the agents and thus the Audit Bureau determines if the approved rate has been charged and the proper forms used. \* \* \* "

Section 379.315, RSMo Supp. 1957, provides as follows:

"1. Every fire insurance company or other insurer authorized to effect insurance against the risk of loss

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by fire, lightning, hail or windstorm shall maintain a public rating record from which the rate of premium applicable to each risk in this state to be written by such company or other insurer may be ascertained in advance of the making of insurance thereon.

2. Such rating record shall include, insofar as applicable, general basis schedule embodying basis rates, charges, terms, conditions, permits and standards, and such other data necessary to the computation or promulgation of equitable rates and rules of practice.

3. Such records shall also show the forms and indorsements upon which each rate is predicated, and shall further show the changes of rate to be made on account of each and every change of form or indorsement.

4. Such rating record shall be open to the inspection of the entire public and shall be maintained in such a form that the property owner can readily ascertain the rate charged on any class of property and the makeup of such rate.

5. Every fire insurance company or other insurer authorized to effect insurance against the risk of loss by fire, lightning, hail or windstorm shall upon request furnish to the holder thereof a written or printed analysis of the rate of premium charged for such policy, showing the items of charge and credit which determine the rate."

The public rating record required by Section 379.315, RSMo Supp. 1957, supra, may be maintained by each company, or any company may use a public rating record maintained by an actuarial bureau, and such power is found in Section 379.320, RSMo 1949, reading as follows:

"For this purpose each company or other insurer shall be permitted to maintain its own

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public rating record or to use a public rating record maintained by an actuarial bureau; provided, such record shows the true and correct rate charged by such company or insurer; and provided further, that no company or other insurer may directly or indirectly by any agreement, contract, understanding or otherwise agree with any other company, insurer, or actuarial bureau to continue to use the rating record of any actuarial bureau or to refrain from maintaining its own rating record, or to maintain the rates fixed by any such actuarial bureau."

From statutes quoted above, we find that a fire insurance company may maintain its own public rating record, and Section 379.335, RSMo 1949, requires that a copy of such rating record be filed with the superintendent of insurance, such requirement being in the following language:

"4. Copies of all public rating records, whether kept by companies separately or actuarial bureaus, shall be filed with the superintendent of insurance not later than ninety days after the taking effect of sections 379.315 to 379.415, and notice of all changes made therein shall be immediately filed with the superintendent of insurance, and such public records and changes therein and modifications thereof shall be open to free public inspection and examination at all reasonable hours of each business day."

While the object accomplished by the Missouri Audit Bureau over a period of many years may be forcing all companies to charge the approved rates and to use the forms and binders as approved and filed as a part of their public rating record, as was indicated in language used by the Court in *State ex inf. Taylor v. American Insurance Company*, cited supra, we find no provision in the fire Rating Act or other statutes in the insurance code of Missouri authorizing the establishment of the Missouri Audit Bureau, nor have we found any statute requiring that daily reports of fire insurance company agencies be audited. However, the fire insurance industry over a long period of time has, by use of the services of the Missouri Audit Bureau, demonstrated the fact that only by such

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daily auditing may the Superintendent of the Division of Insurance, as well as competitors in the field, be fully aware of any deviations from public rating records or discriminations in the matter of applying rates to risks.

The wisdom of this daily auditing is further attested to by the disclosure in your letter of inquiry that the fire company in question desires to operate its own auditing division to audit its own daily reports. In this suggested procedure, we find basic error, unless the Superintendent of the Division of Insurance is able to check such daily reports by his own employees or agents. For over forty years, the Missouri Audit Bureau, formed at the suggestion of the Superintendent of Insurance, has served, and continues to serve, as an unofficial agent of the Superintendent in reporting to him violations of the fire Rating Law by members of the fire insurance industry accepting the services of the Missouri Audit Bureau, and the character of the Bureau, as an impartial agent reporting violations to the Superintendent has not been suggested. It is imperative that an agency independent of the company check such company's compliance with the law. The basic responsibility for checking compliance with this law is in the Superintendent of the Division of Insurance. The fact that he has been assisted in this task, but by no means relieved of it, by an independent agency such as the Missouri Audit Bureau, does not in the least lessen his responsibility in those instances where a company does not desire to avail itself of the services of the Missouri Audit Bureau.

We now look for statutory authority vested in the Superintendent to cope with a situation such as outlined in your letter of inquiry, and it is found in Section 379.330, RSMo 1949, reading as follows:

"1. All rating or actuarial bureaus, whether maintained by one or more companies, shall be subject to the visitation, inspection and examination of the superintendent of insurance, and he is hereby authorized and empowered to make examinations thereof, as often as he deems expedient, and the expense and cost of such examinations shall be paid by the rating bureau examined in such manner as is now required of insurance companies in their examinations.

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2. The superintendent of insurance may address inquiries to any company, insurer or rating bureau which is, or has been, engaged in making rates or estimates for rates for fire insurance upon property in this state in relation to the organization, maintenance and operation thereof, or any other matter connected with its transaction, and may require the filing of such schedules, rates, forms, rules, regulations, agreements or any other information which he may direct, and it shall be the duty of every such company insurer or bureau to promptly make such filing and reply to such inquiries in writing."

The foregoing statute, Section 379.330, RSMo 1949, when considered in the light of the language and purpose of Missouri's fire Rating Act, vests authority in the Superintendent of the Division of Insurance to make periodic examinations of an auditing division set up by an individual fire company in order to check daily reports of fire business against the public rating record maintained by such company. An alternative procedure will permit the Superintendent of the Division of Insurance to order and direct such a company to instruct its agents to forward each day copies of their daily reports to the Division of Insurance where they may be checked against the public rating record of the company in order to determine if deviation or discrimination in rates is shown in the light of such public rating record.

#### CONCLUSION

It is the opinion of this office that a fire insurance company, subject to Missouri's fire Rating Act, maintaining its own public rating record, and choosing to establish its own audit division to audit its daily reports of fire business, is amenable to periodic examination by the Superintendent of the Division of Insurance to insure compliance with the Rating Act, or, in the alternative, may be directed by the Superintendent to order and instruct its agents to forward each day copies of their daily reports to the Division of Insurance where they may be checked against the public rating record of the company in order to determine if deviation or discrimination in rates is shown in the light of such public rating record.

Honorable C. Lawrence Leggett

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

JLO'M:cm