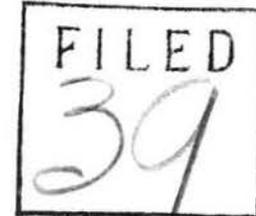


INSURANCE:

Compensation that may be paid insurance examiners for examination of foreign and domestic companies doing business in this state and method of accounting.

February 3, 1938

2-14



Honorable Charles L. Henson
Chief Counsel
Insurance Department
Jefferson City, Missouri

Dear Sir:

We wish to acknowledge your request for an opinion under date of January 29, 1938, wherein you state as follows:

"There are several sections of the insurance laws touching the amount of compensation examiners for the Superintendent of Insurance can receive in connection with the examination of insurance companies. We are referring particularly to Sections 5674 and 5685 of Article 1, Chapter 37, Revised Statutes of Missouri 1929.

We would like to have you advise us as to the amount of compensation an examiner can receive in examining each of the various kinds and types of insurance companies or associations doing business in this state, either foreign or domestic, together with the proper method to be used in approving such accounts."

I.

(A) Insurance Companies

We will consider first the compensation that can be paid examiners under our statutes and then the proper method to be used in approving accounts.

Article I, Chapter 37, R. S. Missouri 1929, relates to the Insurance Department and contains the following sections, among others:

Section 5684 provides for the employment of examiners by the Superintendent of Insurance, in part as follows:

"The superintendent may accept, in lieu of an examination by himself, or by his authority, a certificate of an examination, accompanied by a statement of all the facts in the case made by the insurance commissioner or superintendent of another state, of a company organized under the laws of such state. The said superintendent may make and conduct such examination in person, or he may appoint one or more persons to make and conduct the same for him. If made by another than the superintendent in person, the person thereunto duly appointed by said superintendent shall have the same powers as above granted to the superintendent; and a certificate of appointment, under the official seal of said superintendent, shall be sufficient authority and evidence thereof for the person or persons to act. For the purpose of making such examinations, or having the same made, the superintendent may employ the necessary clerical, actuarial and other assistance."

Section 5685 provides for the payment of expenses incurred in examination of insurance companies as follows:

"The expenses of proceedings now or hereafter had against insurance companies, and of examinations of the assets or liabilities and valuations of policies of insurance companies doing business in this state, shall be assessed by the superintendent of the insurance department upon the company proceeded against or examined, or whose policies have been valued, and shall be in the first instance paid by such company, on the order of the superintendent, directly to the person or persons making such examination or valuation, or rendering the

service. In case of such examination, or valuation or proceeding, if the company has been or shall be adjudged insolvent, or shall neglect, fail or refuse to pay said expenses, the superintendent may, in his discretion, retain from the fees collected under the next succeeding section enough to pay for the same, in whole or in part; and the amount so paid by him, together with costs, charges and fees for collecting the same, shall be a first lien upon all the assets and property of such company, and may be recovered by the superintendent in any court of competent jurisdiction, by suit; or, if said company be in liquidation, or process of being wound up, the cost and expenses of settling its affairs shall, except in cases of companies now in the hands of receivers, be allowed and taxed as costs against said company, and shall be a first lien upon and payable out of its assets. When collected by the superintendent, the amount retained by him shall be by him applied to the reimbursement of the fund of the department, and shall then be paid into the treasury, as provided in section 6090: Provided, however, that before any costs of an examination or valuation shall be paid, vouchers for the same shall be submitted to and approved by the state auditor; and provided further, that when any examination or valuation is made by the superintendent in person, the cost of making the same, excepting his traveling or other necessary personal expenses, shall be paid by him, when collected, into the department fund; and provided further, that the fees for an examination of the assets or liabilities of a company shall not exceed ten dollars per day for any one examiner, together with all necessary expenses incurred and actually paid, and reported under oath of the examiner, and that the fees for making valuations of policies or other obligations of assurance shall not exceed ten dollars for each million dollars of insurance, or fractional part thereof, for all ordinary forms of policies; and for forms of policies requiring special construction of tables for valuation, the cost of computing such tables shall be added."

The above sections appear in the Revised Statutes 1919, numbered 6095 and 6096 respectively.

In 1929 the Legislature adopted Section 5674 R. S. Mo. 1929 (Laws of Missouri 1929, Section 6085a, page 239), providing for the employment among others of a chief examiner and one or more examiners to assist him, as follows:

"Said superintendent of insurance may appoint and employ an actuary, who shall be subject to removal at the pleasure of said superintendent. The salary of said actuary shall not exceed the sum of five thousand dollars (\$5,000.00) per annum, and shall be payable in the same manner as the salary of the superintendent of insurance; said actuary shall have had at least five years' experience in actuarial work. The duties of said actuary shall be those usually performed by actuaries and he shall further do such things connected with the department of insurance as he may be directed to do by the superintendent of insurance. All fees, allowed or paid to the actuary as provided by the laws of the state, shall be paid to the state treasurer in the same manner as other fees collected by the superintendent of insurance. The superintendent of insurance may also appoint a chief examiner, who shall be subject to removal at the pleasure of said superintendent. Said examiner shall have had at least five years' experience in examination work and insurance matters. The salary of said chief examiner shall not exceed five thousand dollars (\$5,000.00) per annum, said salary to be paid in the same manner as are the other salaries of the insurance department. The said actuary and the said chief examiner shall not be or become interested in any insurance company other than as a policyholder. The superintendent of insurance shall, through the chief examiner, have the right to examine into the affairs and good faith of any corporation, association, person or persons who

is engaged in, or is claiming or advertising that it is engaged in, organizing or receiving subscriptions for or disposing of stock of, or in any manner aiding or taking part in the formation of or business of, an insurance corporation, association or organization and such chief examiner shall conduct or assist in conducting the examination of insurance companies, associations and organizations and reciprocal or inter-insurance exchanges as required by law, and do such other things pertaining to the department of insurance as he may be directed by the superintendent of said department. The superintendent of insurance may also employ one or more expert actuaries, or examiners, to assist the chief examiner in making such examinations--the fees and expenses in all such cases to be reasonable and to be paid by the company, association, organization or reciprocal or interinsurance exchange under examination, upon accounts approved by the superintendent of insurance. Said actuary and chief examiner shall each file bond as required by the superintendent of the insurance department, said bond not to exceed the sum of ten thousand dollars (\$10,000.00)."

And also adopted Section 5676 R. S. Missouri 1929 (Laws of Missouri 1929, Section 6087, page 233), as follows:

"Said superintendent shall receive an annual salary of \$6,000.00, and his deputy an annual salary of \$4,500.00, which salaries shall be paid monthly in the manner hereinafter provided, which said salary shall be paid and accepted in full compensation for all services performed by said superintendent and deputy in any capacity. All fees paid the said superintendent or any employe of said department or any appointee for any special purpose shall be paid into the state treasury to the credit of the insurance department fund and no fees shall be retained

by any official, employe or appointee of said department. Provided, nothing contained herein shall apply to the per diem to be paid to special examiners or actuaries employed by the superintendent of insurance and which is paid by the company under examination upon accounts approved by the superintendent of insurance."

An examination of the above statutes reveals that under Section 5685 fees for the examination of a company "shall not exceed Ten Dollars per day for any one examiner, together with all necessary expenses incurred and actually paid."

Section 5674 passed subsequently to Section 5685 provides that "in making such examinations--the fees and all expenses in all such cases to be reasonable."

The question arises whether the legislature in enacting the latter section intended that the only limitation on the amount to be paid examiners was that they be reasonable.

A similar question was presented in the case of State vs. Westhues, 9 S. W. (2) (Mo.) 612, l. c. 618, 619. One section provided that "there shall not be allowed for such publication a higher rate than one dollar per square," etc, and another section provided that it was the duty of the Secretary of State "to obtain the most advantageous terms possible." The Court in holding that there was no conflict between the two sections, and that they should be read and construed together, said:

"*****respondent held that it was the duty of the secretary of state under the law (section 10402, R. S. 1919) 'to obtain the most advantageous terms possible.' Respondent then set forth what he considered is meant by the words 'most advantageous terms.'

It is the contention of relator that section 10402, R. S. 1919, was impliedly repealed by Laws of 1923, pp. 322 and 323, whereby section 10401, R. S. 1919, was expressly repealed and new section 10401 was enacted in lieu thereof, in this contention we are unable to concur.

The first eleven lines of new section 10401 are substantially the same as section 10401, R. S. 1919, except that 'constitutional amendments or other questions to be submitted to the people' are added. The following language is identical in both sections, to-wit:

'There shall not be allowed for such publication a higher rate than one dollar per square of two hundred and fifty ems for the first insertion, and fifty cents for each subsequent insertion; and for fractional squares and parts of squares in the same proportion.'

New section 10401 concludes as follows:

'When any law, proclamation, advertisement, nominations to office, proposed constitutional amendments, or other questions to be submitted to the people, order or notice, shall be required by law to be published in any newspaper, the rates herein specified shall prevail, and all laws or parts of laws in conflict herewith, except sections 10405, 10406 and 10407, Revised Statutes of Missouri, 1919, are hereby repealed.'

'The rates herein specified' are the rates specified in the first sentence comprising eleven lines of new section 10401. Such rates may not be higher than \$1, etc. We are unable to perceive any conflict between new section 10401 and section 10402, R. S. 1919. Hence the latter section must be deemed to be in full force and effect. New section 10401 and section 10402, R. S. 1919, must be read together and construed as if they read: There shall not be allowed for such publication a higher rate than \$1 per square, etc., but, in procuring such publication, the public officers shall accept of the most advantageous terms that can be obtained, not exceeding \$1 per square, etc."

And in the case of State ex rel. vs. Lemay Ferry Sewer District of St. Louis County, 92 S. W. (2) (Mo. Sup. En Banc) 704, l. c. 706, 707, we had the following situation: One section provides that the Board of Supervisors may levy "not more than ten cents per square of one hundred square feet". Another section provides that the Board of Supervisors "shall make such additional uniform tax levies as will be necessary to pay such deficiencies". The Court in holding that the two sections should be read and construed together and both given force and effect reached the conclusion that the additional levies could not exceed the maximum levy of ten cents, but was intended to provide for additional levies to pay deficiencies within such limits. The Court in its opinion said:

"A literal construction of section 11062, standing alone, would destroy the limitation placed on the levy by section 11037, allow the district to incur preliminary expenses in any amount it saw fit, without limit, and, upon dissolution of the district, permit additional levies to be made to pay the outstanding obligations of the district, even though the combined levies be far in excess of the maximum levy of 10 cents authorized by section 11037. It thus appears that, when these two sections are considered separately, they appear to be in hopeless conflict. However, as they are parts of the same act and relate to the same subject-matter, they should be read and construed together and both be given force and effect, if by so doing we can effectuate the intention of the Legislature, and at the same time not violate any recognized rule of statutory construction.

As heretofore seen, section 11037 fixes the maximum levy which can be made for the purpose of paying preliminary expenses incurred and to be incurred at 10 cents per 100 square feet, but it does not require that the maximum of 10 cents per square be levied in the first instance. The Legislature knew that fact. If a district should levy less than the maximum

limit of 10 cents, then incur expenses in excess of the levy made, but within the authorized limit of 10 cents, such deficiency should be paid because incurred within the limit authorized. Evidently the Legislature intended by the enactment of section 11062 to care for such a deficiency by providing for additional levies within the limit authorized, to pay deficiencies within, but not in excess of, such authorized limit. We so construe section 11062. Such a construction is not only reasonable but it accredits the Legislature with a laudable purpose in enacting both sections and gives to both sections life and operative effect. The presumption is that the Legislature had a purpose in enacting both sections and intended that both should be effective. To give the sections the construction contended for by relators would emasculate section 11037 by removing the limit placed on the levy by that section, and make possible the incurring of useless and unnecessary expenses which would finally result in the imposition of unjust and unfair tax burdens."

Returning to the consideration of Sections 5674 and 5685 we are unable to perceive any conflict between them. Reading the two sections together we are of the opinion that examiners making insurance examinations of both foreign and domestic companies are entitled to reasonable fees, but not to exceed Ten Dollars per day for any one examiner, together with all necessary expenses incurred and actually paid.

We are of the opinion that the above conclusion is further strengthened by reason of the language of Section 5675, supra, which was adopted at the same legislative session as Section 5674, in that the former section specifically refers to a per diem to be paid examiners employed by the Superintendent of Insurance. The words "special examiners" being merely used to distinguish them from examiners attached to the Insurance Department as regular employees of the State and paid by the latter.

(B) Insurance on the
Assessment Plan.

Article III, Chapter 37, Section 5756 R. S. Missouri 1929, relates to insurance on the assessment plan and provides that the fees and costs of examination shall be the same as now provided by law for the examination of life insurance companies, as follows:

"The fees for issuing certificates of authority to do business, for making the report to the circuit court upon an application for incorporation, and for filing annual statements, shall in each of aforesaid cases be the sum of twenty-five dollars; and the fees and costs of examinations and the fee for each agent's license shall be the same, and paid by the company in like manner, as now provided by law for the examination of life insurance companies."

From the foregoing we are of the opinion that examiners in making examinations of insurance companies doing business on the assessment plan, both foreign and domestic, are entitled to reasonable fees but not to exceed Ten Dollars per day for any one examiner, together with all necessary expenses incurred and actually paid.

(C) Insurance on Stipulated
Premium Plan.

Article IV, Chapter 37, Section 5762 R. S. Missouri 1929, relates to insurance on the stipulated premium plan and provides that Sections 5684 and 5685 are applicable in part as follows:

"*****shall be deemed to be engaged in the business of life insurance upon the stipulated premium plan and shall be subject only to the provisions of this article, except that the provisions of sections 5684 and 5685, Revised Statutes 1929, shall be applicable."

The above section refers only to Sections 5684 and 5685, but considering all the sections relating to the same subject matter we would necessarily include Section 5674, and we are therefore of the opinion that examiners in making examinations of insurance companies doing business on the stipulated premium plan, both foreign and domestic, are entitled to reasonable fees, but not to exceed ten dollars per day for any one examiner, together with all necessary expenses incurred and actually paid.

**(D) Industrial and
Prudential Insurance.**

Article V, Chapter 37, Section 5788 R. S. Missouri 1929, relates to industrial or prudential life insurance business, and provides that the fees shall be the same as now paid by other life insurance companies, as follows:

"All companies organized under the provisions of this article shall pay the same fee and license as are now paid by other life insurance companies, except that the annual license for each agent and solicitor shall not exceed the sum of fifty cents."

From the foregoing we are of the opinion that examiners in making examinations of insurance companies doing an industrial or prudential business, both foreign and domestic, are entitled to reasonable fees, but not to exceed Ten Dollars per day for any one examiner, together with all necessary expenses incurred and actually paid.

**(E) Reciprocal or Inter-
Insurance Contracts.**

Article XI, Chapter 37, Section 5972, R. S. Missouri 1929, relates to individuals, partnerships and corporations, both domestic and foreign, exchanging reciprocal or inter-insurance contracts with each other, and provides in part as follows:

"The business affairs and assets of said reciprocal or inter-insurance exchanges, as shown at the office of the attorney thereof, shall be subject to examination by the superintendent of insurance, as often as he sees fit and the cost thereof shall be paid by the exchange examined."

Section 5685 supra, providing for payment of a per diem fee, relates to examination of insurance companies generally. Section 5674 supra, providing for the payment of a reasonable fee, relates to an insurance company generally, but also specifically includes reciprocal or inter-insurance exchanges. Construing the aforementioned sections with Section 5972, we are of the opinion that examiners in making examinations of reciprocal or inter-insurance exchanges, both foreign and domestic, are entitled to reasonable fees not to exceed Ten Dollars per day for any one examiner, together with all necessary expenses incurred and actually paid.

(F) Fraternal Beneficiary Associations.

Article XIII, Chapter 37, Section 6016, relates to fraternal beneficiary associations and provides compensation for the examiners of domestic companies in part as follows:

"The superintendent of insurance, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society.***** The expense of such examination and all valuations, including compensation and actual expenses of examiners, shall be paid by the society examined, or whose policies are valued, upon statements furnished by the superintendent of insurance, and each society shall be examined at least once every three years. The compensation of examiners shall be ten dollars per day for each examiner for regular or special valuations of the policy obligations of such societies."

Article XIII, Chapter 37, Section 6018 relates to fraternal beneficiary associations and provides compensation for the examiners of foreign companies in part as follows:

"The superintendent of insurance, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. *****The compensation and actual expenses of the examiners making any such examination, and for all general or special valuations, shall be paid by the society examined or whose policy obligations have been valued upon statements furnished by the superintendent of insurance: Provided, the fees of examiners shall not exceed fifteen dollars per day for each examiner."

From the foregoing we are of the opinion that examiners in making examination of insurance companies doing business as fraternal beneficiary associations, are entitled to Ten Dollars per day for any one examiner, together with actual expenses, if the association be a domestic one, and not to exceed Fifteen Dollars per day for any one examiner together with actual expenses if the association be a foreign one.

(G) Town Mutual
Insurance Companies.

Article XVI, Chapter 37, Section 6078, R. S. Missouri 1929, relates to town mutual insurance companies and provides compensation for the examiners in part as follows:

"The expenses of such examination shall be paid by the company examined, but the amount charged therefor shall not exceed the sum of five dollars per day for the time actually expended in making the same, and actual traveling and hotel expenses, and shall not exceed in the aggregate the sum of fifty dollars."

From the foregoing we are of the opinion that examiners in making examinations of insurance companies doing business as town mutual insurance companies, both foreign and domestic, are entitled to a fee of not to exceed \$5.00 per day, together with actual traveling and hotel expenses, but in no event must the cost of the entire examination, including the per diem and expenses, exceed the sum of Fifty Dollars.

II.

Method of Approving Examiners Accounts.

Section 5684 R. S. Missouri 1929 provides that the Superintendent of Insurance shall examine any insurance company incorporated by or doing business in this State, in part as follows:

"The superintendent of the insurance department shall examine and inquire into all violations of the insurance laws of the state, and examine the financial condition, affairs and management of any insurance company incorporated by or doing business in this state*** **."

Section 5685 R. S. Missouri 1929, provides that the expenses of examinations of insurance companies doing business in this State shall be assessed by the Superintendent of Insurance upon the company examined, and on his order paid by the Company directly to the person or persons making the examinations. It is further provided that before any costs of an examination are paid vouchers for the same must be submitted by the examiners under oath and approved by the Auditor (See Section 5685 supra).

Sections 5674 and 5676 R. S. Missouri 1929 provide that the fees and expenses of examiners are to be paid by the company, association, organization, reciprocal or inter-insurance exchange under examination, upon accounts approved by the Superintendent of Insurance (See Sections 5674 and 5676 supra).

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Construing the aforementioned sections together so as to give each force and effect, we are of the opinion that the proper method to be used in approving accounts of examiners employed by the Superintendent of Insurance to examine insurance companies incorporated by or doing business in this State is to have the superintendent examine them and if correct and under oath to approve them, submit same to the auditor for his approval, and then forward to the company examined for their payment directly to the examiner.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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