

INSURANCE: Sec. 49, page 204, Laws of Missouri, 1941, does not cover costs and expenses of distributing impounded funds to policyholders.

February 3, 1942

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Honorable Edward L. Scheufler  
Superintendent of Insurance Department  
Jefferson City, Missouri

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Dear Sir:

We have your request for an opinion from this office, which is as follows:

"Your official opinion and interpretation is requested of the said Section 49, Laws of Missouri 1941, page 204, reading as follows:

'Fire Rate Litigation. There is hereby appropriated out of the State Treasury, chargeable to the Insurance Department Fund, the sum of Fifteen Thousand Dollars (\$15,000.00) for the payment of bills of exceptions, printing of briefs, court deposits and all necessary court and other costs and expenses, except attorneys' fees, in connection with the fire rate litigation, during the 1941 and 1942 biennium.'

"This official courtesy is requested of you because of my desire to endeavor to distribute what I reasonably can of the 10% Rate Case impounded funds. My administrative problem is otherwise somewhat presented at length in my letter of January 7, 1942, addressed to the members of the Permanent Seat of Government of which you are a member, and in which letter I pointed out that I have inherited several problems in rela-

tion to this sizeable amount of money, which is resting in the banks awaiting an attempted distribution before the then balance can be escheated to the Treasury of the State under the recently enacted Escheat Law, inasmuch as no request was made upon the legislature for the enactment of another appropriation bill to assist the Superintendent for payroll and other necessary expenses incident thereto.

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"Your attention is called to the particular wording of the above section which is not earmarked by limitation, and reasonable construction of same might permit me to use an otherwise unexpended portion of the same in my projected endeavors to put some of this money out to numerous policyholders. \* \* \*"

The question submitted by you resolves itself to a question of whether the words "and other costs and expenses \* \* \* in connection with the fire rate litigation," as used in Section 49 of the Appropriation Act found at page 204, Laws of Missouri, 1941, are broad enough to include costs and expenses of distributing to the policyholders the 10% impounded fund which was accumulated several years ago in the fire rate litigation.

An examination of said Section 49 shows that the sum of \$15,000 was appropriated for the payment, first, of certain specific items in connection with the fire rate litigation, and then "other costs and expenses \* \* \* in connection with the fire rate litigation." In other words, the enumeration of specific things is followed by words of general meaning. This situation calls into play the familiar rule of statutory construction known as ejusdem generis, which is that where a law enumerates specific matters or things to which its provisions apply, and then by general language undertakes to include other matters or things not specifically named, the general words will be limited in meaning to matters or things of the same nature or kind as those specifically named. The rule has been stated by the courts of this State as follows:

"There is a well-recognized rule that where a law specifically designates several matters or things which shall be governed by its provisions, and then by general language undertakes to include other acts and things not specifically named, such law must be so construed as to apply only to things or acts of the same general nature as those definitely set out. (City of St. Louis v. Kaime, 180 Mo. 309, and State ex rel. v. Berryman, 142 Mo. App. 373.)" (State ex rel. Spriggs v. Robinson, 253 Mo. 1. c. 287.)

"It is a familiar rule of statutory construction that where an enumeration of specific things is followed by some more general word or phrase, such general word or phrase should be construed to refer to things of the same kind. (19 C. J. p. 1255.)" (State ex rel. Goodloe v. Wurdeman, 286 Mo. 1. c. 161.)

Applying the above rule to the statute in question, it will be seen that the words "and other costs and expenses", as used therein, must be limited in meaning to costs and expenses of the same general nature or kind as those specifically enumerated, which are payment of bills of exceptions, printing of briefs, court deposits and all necessary court costs. These specific items are clearly costs and expenses which are incident to litigation. Litigation is defined as a proceeding in court to enforce rights and secure compliance with the law. (Words and Phrases, Perm. Ed.) It must follow, therefore, that the words "other costs and expenses" are limited in application to costs and expenses of the same nature or kind as payment of bills of exceptions, printing of briefs, court deposits and court costs in connection with the fire rate litigation. Expenses of the distribution to policyholders of the 10% impounded fund are not of the same nature as the foregoing specified costs of litigation and court costs, and hence the costs of the distribution of the 10% impounded funds are not provided for by said Section 49 of the Appropriation Act above referred to.

It seems to us that the foregoing reasoning is peculiarly applicable to the construction of appropriation acts because the Constitution of Missouri (Section 19, Article X) provides that an appropriation act "shall distinctly specify the sum appropriated, and the object to which it is to be applied." It must be presumed that the General Assembly intended to comply with this constitutional provision when it passed the appropriation act in question, and by so doing it distinctly specified the object to which the appropriation could be applied.

There are exceptions to the rule of ejusdem generis, but we do not believe the statute in question comes within the exceptions. In speaking of this rule of construction, the Supreme Court of Missouri in the case of State v. Eckhardt, 232 Mo. 1. c. 53, said:

"\* \* \* Nor does the doctrine apply where the specific words of a statute signify subjects greatly different from one another; nor where the specific words embrace all objects of their class, so that the general words must bear a different meaning from the specific words or be meaningless." (36 Cyc. 1119-1122.)"

The items of payment for bills of exceptions, printing of briefs, court deposits and necessary court costs are not greatly different from one another. They belong to the general class of costs of litigation. It might be argued that the specified items exhaust all the objects of their class in that they include all court costs and expenses, and that therefore the words "other costs and expenses" must bear a different meaning or be discarded as meaningless. However, even if that view were taken, "the other costs and expenses" would have to be "in connection with the fire rate litigation." The distribution of the impounded money in the 10% fire rate litigation is no part of the litigation and no part of the court procedure. The Supreme Court has definitely held (Aetna Ins. Co. v. O'Malley, 118 S. W. (2d) 3, and many cases since) that the courts have no jurisdiction to administer or distribute to policyholders funds impounded in fire rate litigation, but that such distribution is an administrative duty of the Superintendent of Insurance. Therefore, under no construction can

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the words "other costs and expenses \* \* \* in connection with the fire rate litigation" be held to include the costs and expenses of distributing impounded funds to the policyholders.

CONCLUSION

It is, therefore, the opinion of this department that the money appropriated by Section 49, page 204, Laws of Missouri, 1941, cannot be used to defray the expenses of distributing to the policyholders the 10% impounded fund accumulated in the fire rate litigation.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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