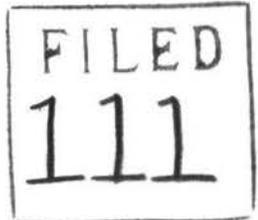


INSURANCE: There is nothing to prohibit a fire insurance company from switching from maintenance of its own public rating record to one that is maintained by an actuarial bureau if approval of the superintendent of insurance is obtained as prescribed by statute when the effect of said switching is to increase the fire insurance premium rates.

OPINION NO. 111  
(445 - 1967)

July 1, 1968



Honorable Thomas D. Graham  
State Representative  
District 122  
Hammond Building - 312 E. Capitol Avenue  
Jefferson City, Missouri 65101

Dear Representative Graham:

This is in reply to your opinion request asking first, whether a fire insurance company presently maintaining its own public rating record as provided by Section 379.315, RSMo 1959, may withdraw said public rating record and use a public rating record maintained by the Missouri Inspection Bureau as set out in Section 379.320, RSMo 1959; and second, whether the provisions of Section 379.320, RSMo 1959, are contingent upon any favorable or unfavorable underwriting experience statistics.

In regard to your first question, Sections 379.315, 379.320, 379.335 and 379.405, RSMo 1959, are thought to be pertinent. Section 379.315, RSMo 1959, requires a fire insurance company to maintain a public rating record. Section 379.320, RSMo 1959, enables a company to maintain its own public rating record or to use a public rating record maintained by an actuarial bureau. Section 379.335, RSMo 1959, reads in part as follows:

"All public records required to be maintained by sections 379.315 to 379.415, whether kept by insurers separately or actuarial bureaus, shall show the rate which such insurer proposes to charge and collect, but any insurer maintaining

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its own public rating record, or any actuarial bureau shall be permitted to change or lower its rate or rates whenever it sees fit; provided, that rates shall not be raised until at least ten days' notice has been given by the insurance company to the superintendent of insurance and his approval obtained but in making a change, it shall be required to make the change in writing on its public record, and to immediately give notice thereof to the superintendent of insurance."

Section 379.405, RSMo 1959, reads as follows:

"Special and specific notice and schedule of any increase in rates made by any bureau, insurance company or other insurer (after February 23, 1915, and before this section takes effect) shall be filed with the superintendent of the division of insurance immediately upon the taking effect of sections 379.315 to 379.415, and unless approved by him such increase shall hereafter be deemed unreasonable and unjustifiable and it shall be unlawful for any insurance company or other insurer to charge or collect such increased rate until after the same has been duly approved by the superintendent of insurance."

Considering the aforementioned statutes in pari materia as required by the court in *Mitchum v. Perry*, 390 S.W.2d 600, there is nothing set out in Sections 379.315 or 379.320 to prohibit a company from switching from the maintenance of its own public rating record to one that is maintained by an actuarial bureau. However, if such change involves an increase in rates, then the provisions of Sections 379.335 and 379.405, RSMo 1959, are applicable. These sections authorize the superintendent of insurance to approve or disapprove any increase in fire insurance rates regardless of how such increase in rates is effected. In other words, where the effect of changing from one method of maintaining a public rating record to another results in increasing the insurer's rates, approval of the superintendent must be obtained. Failure to obtain such approval, where the effect of changing methods of maintaining the public rating record is to raise

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the insurer's rates, is clearly contrary to the intent of the legislature in requiring specific approval of increased fire insurance premium rates.

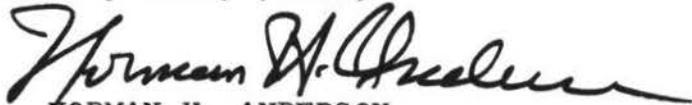
In reply to your second question, the discussion as set out above is thought to essentially answer said question.

CONCLUSION

This office is of the opinion that there is nothing to prohibit a fire insurance company from switching from maintenance of its own public rating record to one that is maintained by an actuarial bureau if approval of the superintendent of insurance is obtained as prescribed by statute when the effect of said switching is to increase the fire insurance premium rates.

The foregoing opinion, which I hereby approve, was prepared by my assistant, L. Michael Lorch.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General