

INSURANCE: Sec. 379.355 RSMo 1949 not violated when cost of municipal franchise tax levied by City of Springfield, Missouri against fire insurance companies has been added to fire insurance rates published for such city by Missouri Inspection Bureau pursuant to Missouri's Rating Act, Secs. 379.315 to 379.415 RSMo 1949.



January 9, 1957

Honorable Lyndon Sturgis  
Prosecuting Attorney  
Greene County  
Springfield, Missouri

Dear Sir:

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

"I would appreciate a legal opinion from your office on the following situation concerning the application of Section 379.355, R. S. Mo. 1949. The first question is as follows:

Does an increase in rate by the Missouri Inspection Bureau applicable to premiums realized in the City of Springfield, Missouri, for the reason that the City of Springfield has charged the companies realizing such premiums a municipal license fee, violate Section 379.355 of the Revised Statutes of Missouri, 1949?

"The second question is:

If such action by the Missouri Inspection Bureau and its member companies does not violate the above cited section, is it a violation of said section for multiple line companies who are charged only one municipal license fee for writing all kinds of insurance to pass the entire amount of the municipal license fee charged onto those customers from which they realize a fire insurance premium?

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"You may recall that several months ago there was some controversy between the City Manager and members of the Council of the City of Springfield and Mr. Lawrence Leggett, Superintendent of the Division of Insurance concerning such rate increase. It was my understanding that such controversy had been settled. However, the question as to the interpretation of this State Statute has not been resolved and your opinion on this matter would be very much appreciated."

The first question you have posed was answered directly on January 5, 1924 in a letter directed to Honorable Ben C. Hyde, Superintendent of Insurance, by the Attorney General of Missouri, Honorable Jesse W. Barrett. In the course of his letter the Attorney General spoke as follows:

"\* \* \* Where rates are regulated by the State, as in this case, and based upon the cost of doing business, it is folly to view a tax upon the company as anything other than a tax and burden upon the people themselves and the sole question here therefore becomes that of whether the special tax levied in certain towns and cities shall be paid by the citizens of the whole or by the citizens of those municipalities. I believe that all ambiguities should be resolved in favor of the best public policy and in this instance I think the public interest can best be served by having the extra cost of doing business assessed to the citizens of those municipalities where that cost is incurred. You are advised, therefore, that insurance companies doing business in municipalities which levy a tax upon the companies therein may there charge higher rates on account of said tax without violating the provisions of Sections 6276 and 6278, R.S. 1919."

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Sections 6276 and 6278 R.S. Mo. 1919, referred to in the preceding quotation, are found unchanged today at Sections 379.350 and 379.355 RSMo 1949, and we here set out the statutes in full:

(Section 379.350, RSMo 1949)

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

(Section 379.355, RSMo 1949)

"No fire insurance company or other insurer, nor any rating bureau shall fix and charge any rate for fire insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of protection against fire."

The conclusion to be made and stated hereafter in relation to the first question posed in your request fully supports the advice given in the Attorney General's letter of January 5, 1924, quoted above. However, it is considered expedient at this time to cite additional reasons for the conclusion to be reached in this opinion.

Missouri's fire insurance Rating Act is found at Sections 379.315 to 379.415 RSMo 1949. For accepted basic procedure under the Rating Act we quote the following from State ex Inf. Taylor v. American Insurance Company, et al. 200 S.W. (2d) 1, 355 Mo. 1053, 1.c. 1078:

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"We hold that in establishing rates the Missouri Inspection Bureau and the Superintendent of Insurance have followed the correct method, as prescribed by our statute by using the aggregate experience of all companies and not the individual experience of each company as a basis. We need not speculate upon the chaotic condition that would result if rates were to be based on the experience of each individual company. That is self-evident."

The discrimination prohibited by Section 379.355 RSMo 1949, supra, must produce one of the following fact situations in order to produce a violation of the statute:

(a) There must be a discrimination in the application of like charges and credits,

or

(b) There must be a discrimination between risks of essentially the same hazards and having substantially the same degree of protection against fire.

In order to refute any contention that published rates for fire insurance coverage in Missouri must be uniform, in amount, throughout different localities in the State, we quote the following from State ex rel. Waterworth v. Clark, 275 Mo. 95, l.c. 105:

"It is idle to say that the hazards of fire and the protection against the same are equal in St. Louis and Clinton, or in Kansas City and Cape Girardeau, or in St. Joseph and Cedar City."

If uniformity in application of like charges and credits, as well as uniformity in classification of risks, made mandatory by Section 379.355 RSMo 1949, supra, are to be maintained by the rating bureau when publishing rates for the companies, it reasonably follows that such uniformity in classification of risks, and fixing of rates applicable thereto, must involve only those factors which can bear upon the situation uniformly and be anticipated at the time the rates are published. Municipal

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franchise taxes bear no relationship to insurance coverage, are conspicuous by their lack of uniformity in amount, and are not exacted according to any fixed pattern throughout the State. To permit consideration of a municipal franchise tax as a basic factor in arriving at published rates for fire insurance coverage in the light of our Rating Act would foster discrimination at the expense of policyholders whose uniform interests were sought to be protected by the Rating Act, and considering such a factor would create an exception to the rule where none now exists in relation to that factor.

Investigation discloses that the increase in fire insurance rates brought about by passage of various municipal franchise tax ordinances throughout the State has not altered the general basis schedule embodying basis rates, charges, terms, conditions, permits and standards used by the rating bureau in publishing rates for insurance coverage, but the action of the rating bureau, on behalf of its subscribers, in directing that such municipal franchise tax be added to the published rate of coverage for the municipality levying the tax can be considered as an aid to the municipality in the collection of its franchise tax rather than a discrimination against the municipality in applying uniform rates for fire insurance coverage. It is concluded that Section 379.355 RSMo 1949 has not been violated when the cost of a municipal franchise tax against fire insurance companies, levied by the City of Springfield, Missouri, has been added to the fire insurance rates published for such City by the Missouri Inspection Bureau pursuant to Missouri's Rating Act found at Sections 379.315 to 379.415 RSMo 1949.

An answer to your second question must be withheld until additional facts are submitted disclosing (1) the wording of the ordinance in question, and (2) the manner in which such multiple line companies are passing on to the policyholders the license fee. In submitting this information it should be kept in mind that premium rates for fire, lightning, hail and windstorm, are broken down in schedules from extended coverage and miscellaneous casualty risk rates.

#### CONCLUSION

It is the opinion of this department that Section 379.355 RSMo 1949 has not been violated when the cost of a municipal franchise tax against fire insurance companies, levied by the

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City of Springfield, Missouri, has been added to the fire insurance rates published for such City by the Missouri Inspection Bureau pursuant to Missouri's Rating Act found at Sections 379.315 to 379.415 RSMo 1949.

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

Yours very truly,

John M. Dalton  
Attorney General

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