

December 28, 1979  
Amended August 21, 1980

AMENDED OPINION LETTER NO. 25  
Answer by letter-Allen

Honorable James Antonio  
State Auditor  
State Capitol Building  
Jefferson City, MO 65101



Dear Dr. Antonio:

This is in response to a request from your predecessor for an opinion concerning the following questions:

1. Should the Missouri Division of Insurance assess against insurance companies the excess of the expenses of the division over the amount collected under Section 374.230 as seemingly required by Section 374.260, RSMo 1969?
2. May insurance companies, pursuant to Section 148.400, RSMo Cum. Supp. 1975, take as a credit against premium taxes any amount assessed pursuant to Section 374.260?

Section 374.260, RSMo 1978, provides:

In case the expenses of this division, including the salaries paid to the director and deputy director, shall exceed the amount collected under section 374.230, the director shall, annually, assess upon all insurance companies doing business in this state a sum equal to such excess, which he shall collect and apply in like manner as by this chapter authorized and required in respect to the fees payable by such companies. Such

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assessments shall be made in proportion to the relative amounts of the assets of each company.

Section 374.230, RSMo 1978, is the section prescribing various fees, excluding examination fees, to be charged by the Division of Insurance for enumerated services. It should be noted that the Missouri legislature specifically indicates in this section and in § 374.260 what fees are to be used for the expenses for the Division of Insurance. Section 374.230 does not include, however, broker's and miscellaneous fees. Therefore, the broker's and miscellaneous fees such as under § 375.081, RSMo 1978, cannot be considered in determining whether the expenses of the Division exceed the amount collected under § 374.230. The Director shall assess all insurance companies doing business in this state a sum equal to any excess as determined under § 374.260 without regard to those fees not specifically enumerated in § 374.230.

Section 148.400, RSMo 1978, provides:

All insurance companies or associations organized in or admitted to this state may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, income taxes, franchise taxes, personal property taxes, valuation fees, registration fees and examination fees paid, including taxes and fees paid by the attorney in fact of a reciprocal or interinsurance exchange to the extent attributable to the principal business as such attorney in fact, under any law of this state.

The facts which give rise to this opinion are that in a fiscal year the expenditures, exclusive of examination costs, of the Division of Insurance exceed the amount it collects pursuant to § 374.230 by approximately \$500,000.

Our chief concern is to determine the legislative intent from the plain language contained in the appropriate statutory provisions. The plain language of § 374.260 says that the Director of the Division of Insurance is required to assess the amount by which expenditures, exclusive of examination costs, exceed collections against insurance companies under § 374.230. We simply cannot ignore this language.

The assessment under § 374.260 is not an allowable deduction from premium tax in that it is not an enumerated credit which is

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set out in § 148.400. We, therefore, believe that such assessment is not to be credited against the premium taxes.

It is the opinion of this office that the Division of Insurance should assess against insurance companies the excess expenses of the Division over the amount collected under § 374.230 as required under § 374.260. The Director of the Division should consider only those fees specifically enumerated in § 374.230 in making his assessment and should not consider various broker's and miscellaneous fees which are not enumerated in that section in making his assessment. It is the further opinion of this office that such assessment is not a credit against the premium tax as provided in § 148.400.

Very truly yours,

JOHN ASHCROFT  
Attorney General