

INSURANCE DEPARTMENT:

Rate filing held in violation
of Article VIII, Chapter 37,
Revised Statutes Missouri 1929.

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August 24, 1935

Insurance Department
State of Missouri
State Capitol Building
Jefferson City, Missouri



Attention: George A. S. Robertson
Deputy Superintendent

Dear Sir:

This Department is in receipt of your request
for an opinion, as to the following state of facts:

"We have a fire insurance company which
has been issuing a fire insurance policy
for a term of 3 or 5 years at the usual
reduction in rate for such term. This
policy contains a provision which allows
the insured to pay the premium annually
and therefore permits the termination of
the contract at the end of any year.

It appears to us that under this term
policy the insured is, in effect, only
insured for one year at a time but pays
a less rate per year than an insured who
buys a one year policy of insurance.
Such a practice also seems unfair to
the policyholders who pay the full term
premium at the time the term policy is
issued.

This department has held in the past
that such an arrangement of premium
payment results in unfair discrimination
among policyholders, and also constitutes

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rebating under the Missouri Statutes.

Will you kindly give us your opinion as to the legality of this practice of commuting termed premiums to the annual basis."

On May 15, 1933 this department rendered an opinion to the effect that a filing of this nature was not in violation of the Missouri Statutes, and, therefore, should be accepted by the Superintendent of Insurance. Since the rendition of that opinion however, a case specifically deciding the question has been decided by the Supreme Court of Ohio (Merchants' Fire Ins. Co. of Indiana v. Bowen 196 N. E. 774.), and we therefore hereby overrule our former opinion on this point.

In the general insurance company case heretofore referred to, the court said:

"The Merchants' Insurance Company has been issuing a fire insurance policy for a term of five years, with a provision therein which enabled the insured to pay the premium yearly and terminate the policy at the end of any year. Under such a five-year policy the policyholder was in effect only insured for one year at a time, but in this way paid a less rate per year than an insured who took out a one-year contract of insurance. At the same time the insurance company issued policies for a five-year term that had the same rate for five years as the five-year contract referred to above, but the premium for the full term was payable in advance and the contract was effective for the full term.

The General Insurance Company of America was issuing similar policies but somewhat differently worded.

Some time prior to April 16, 1935, there were 'special deviation filings' covering such long-term contracts.

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On the date mentioned, the superintendent of insurance made an order and finding that such filings 'result in a different annual rate for the same risk or similar risks in the same class,' and that such deviation filings were contrary to the Bureau of Rating Law of Ohio (section 9592-1 et seq., General Code), and especially in violation of section 9592-9, General Code, which provides that any deviation 'shall be uniform in its application to all of the risks in the class for which the variation is made;' and all such filings were declared null and void.

Notice of this order was given to each fire insurance company, but policies then written were allowed to remain in force until the next anniversary date of their inception.

The court holds that the deviation is not uniform, as required by section 9592-9, General Code, and the fixing or charging of such rates constitutes a discrimination, within the meaning of section 9592-8, General Code. The order of the superintendent of insurance was therefore strictly according to law."

CONCLUSION

The provisions of the Ohio Statutes, with respect to discrimination between fire insurance rates, are substantially similar to the Missouri Laws on this question.

It is, therefore, the opinion of this department that the rate filing as described in your letter to this

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department, results in an unfair discrimination among policyholders and is in violation of Article VIII, Chapter 37 Revised Statutes Missouri 1929.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

JWH:LC