

DIVISION OF INDUSTRIAL  
INSPECTION:

To be subject to pay an inspection  
fee a business must fall within one  
of the classes enumerated by Missouri  
law as being subject to inspection.

September 19, 1950



Mr. L. L. Duncan, Director  
Division of Industrial Inspection  
Department of Labor and Industrial  
Relations  
Jefferson City, Missouri

Dear Sir:

This office is in receipt of your recent request for an  
official opinion. You thus state your request:

"We have received a communication from the  
Missouri Pacific Railroad Company, Kansas  
City, Missouri, regarding the payment of an  
inspection fee. A copy of their letter is  
attached.

"They have referred to Sections 10179 and  
10180, Revised Statutes of Missouri, 1939,  
which provides for inspections and inspection  
fees. As we understand their letter, since  
the offices they occupy in the Railway Ex-  
change Building is leased from the Yarco  
Realty Company, they do not feel they are  
obligated to pay the inspection fee.

"We would greatly appreciate a ruling from  
your office on this matter."

The powers and duties of the State Commissioner of Labor and  
Industrial Inspection, and his deputies, is set forth in Chapter 68,  
Article 4, Section 10179, Mo. R. S. 1939. We quote the following  
portion of that section:

"The state commissioner of labor and industrial  
inspection may divide the state into districts,

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assign one or more deputy inspectors to each district, and may, at his discretion, change or transfer them from one district to another. It shall be the duty of the commissioner, his assistants or deputy inspectors, to make not less than two inspections during each year of all factories, warehouses, office buildings, freight depots, machine shops, garages, laundries, tenement workshops, bake shops, restaurants, bowling alleys, pool halls, theaters, concert halls, moving picture houses, or places of public amusement, and all other manufacturing, mechanical and mercantile establishments and workshops. \* \* \*

(Underscoring ours.)

It will be observed from the above that the places subject to inspection are enumerated, and that one of the places enumerated is "office buildings." The question which we have to decide here is whether, when the statute lists "office buildings" as one of the places to be inspected, it also includes various parts of the office building which have been leased to various persons, companies and corporations. In regard to this we would call your attention to the following portion of an opinion rendered by this office on July 10, 1933, to Mary Edna Cruzen, Labor and Industrial Commissioner, Jefferson City, Missouri, in response to her inquiry as to whether the Department of Labor and Industrial Inspection had authority to inspect different offices in an office building:

"Your first and second inquiries above refer to the inspection of office buildings. You desire interpretation of office buildings, and information as to whether the inspection of office buildings includes the right to inspect the various offices which go to make up the building.

"In answer to your inquiry, it is the opinion of this Department that the term "office building," as used in Section 13218 R. S. Mo. 1929 above, means an inspection of the building alone, and that the fee therefor should be charged on the basis of the number of employees employed by the company, individual, or individuals owning the office building. You may not take into consideration in fixing the fee for this inspection the total number of employees employed by the various tenants who rent office space in an office building.

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"You inquire whether you have a right to inspect the different offices located in the building. It is the opinion of this department that you do have the right to inspect the different offices in an office building where the businesses carried on in the offices are those named in Section 13218. (Section 10179 Mo. R. S. 1939). When the offices in the office building are leased, the space rented belong to the lessee for the period of the lease, and the owner of the building usually has no jurisdiction over it. The space rented belongs to the lessee and becomes separate and distinct from the building itself. Any number of different businesses may and naturally are carried on in the various offices of the large office buildings and when the businesses are those defined in Section 13218, (Section 10179 Mo. R. S. 1939), they may be inspected the same as if they occupied an individual building of their own."

It seems clear that when the statutes lists "office buildings" as being subject to inspection, it means the building as a whole. This impression is strengthened by the fact that various statutes in Missouri set up various requirements for public buildings. For example, Section 10185 R. S. Missouri, 1939, sets forth regulations regarding hatchways, elevators, and wellholes in public buildings. Section 10186 sets forth regulations regarding fire escapes. Various other sections set up requirements regarding ventilation, sanitation and other similar matters which are clearly under the control of the owner and manager of an office building. It would seem therefore, as we said above, that an "office building" as a whole, is subject to inspection with respect to such matters as elevators, trapdoors, fire escapes, et cetera.

It may be observed here, that the term "office building" does not exclusively mean a building which contains nothing but offices as the term "office building" is commonly understood. The term is broader than that. In the case of Pritchard v. National Protective Insurance Company, 200 S. W. (2d) 540, the court determined that the building there in question was an "office building" although a number of rooms in the building were rented out to private individuals as living quarters only. Numerous other cases held likewise. The question before us now is whether, when a portion of an "office building" as defined above is rented or leased to an individual, company, or corporation, that portion is subject to a separate and different inspection than that to which the "office building" is subject, or in other words, whether the inspection of the "office building" excludes any portion of the office building which is leased or rented from inspection. We do not believe that it does, if in that portion which is leased or rented there is carried on any one of the businesses listed in Section 10179 as being subject to inspection. Our reason

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for so believing is based upon the fact that, as stated in the Cruzen opinion quoted above, when property is leased or rented, it passes, for the term of the lease, beyond the control of the lessor, and he should not therefore be held accountable for conditions upon the premises over which he has no control. In the case of Marden v. Radford, 84 S. W. (2d) 947, l.c. 954, the court stated:

"The relation of landlord and tenant may be defined in general terms as that which arise from a contract by which one person occupies the real property of another with his permission and in subordination to his rights; the occupant being known as the tenant and the person in subordination to whom he occupies as the landlord.

"The authorities agree, as essential to such relationship, that there must be a reversion in the landlord; the creation of an estate in the tenant, at will or for a term less than that for which the landlord holds the same; the transfer of the exclusive possession and control of the premises to the tenant; and, generally speaking, a contract, either express or implied, between the parties."

It is the opinion of this department therefore that space leased in an office building is not exempt from an inspection separate from the inspection of the office building in which the rented portion is located merely because of the fact that this portion is leased.

The question before us in the instant case is whether the offices of the Missouri Pacific Railroad Company, which are leased offices in an office building, are subject to inspection.

Your letter of inquiry does not fully reveal the operations carried on. An investigation by us shows that these offices are used for the purpose of carrying on only a part of the business of the Missouri Pacific Railroad Company, and that this particular part consists of making audits, making up payrolls, and the carrying on of correspondence relating to the business of this concern, but that no tickets are sold in or through these particular offices. This being the case, it is our opinion that these offices are not subject to inspection because of the fact that they do not fall within any one of the classes of places enumerated in Section 10179 as being subject to inspection.

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CONCLUSION

It is the opinion of this department that the offices of the Missouri Pacific Railroad Company located in the Railway Exchange Building in Kansas City, Missouri, are not liable to pay an inspection fee to the Division of Industrial Inspection because of the fact that they do not come within any of the classes of places subject to inspection.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General