

Insurance Company, Overpayment by. Auditor, Authority to Make Settlement With Insurance Company.

Where an insurance company has made overpayments, it is within the power of the auditor to allow the company credit for such overpayment, provided the same does not violate rules established by the department, or conflict with examinations made by the State Examiner.

May 1, 1915.

Hon. William Keating,
State Auditor,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your letter, addressed to you by C. M. McCoy, Secretary of the Montana Fire Insurance Company, relative to alleged over payments made by said Company. The law relating to this question is found in Section 4017 et seq. of the Revised Codes, as

amended by Chapter 14 of the Laws of 1909, Chapter 63 of the Laws of 1915, and as added thereto by Chapter 148, Laws of 1911, relating to State Fire Marshal. Under the provisions of said Section 4017, the insurance company, in order to obtain a license, must pay the sum named therein, the minimum of which is \$125, and which authorizes the company to write premiums to the amount of \$5,000, or less, and if the company writes more than the \$5,000, it must pay an additional sum equal to \$20 for each \$1,000 of such excess. The law in effect requires the license to be issued, and the payment of the minimum amount to be made by the company, but is silent as to when the amount for the excess premium shall be paid. A discretion appears to be vested in the insurance commissioner to establish rules and regulations which shall be uniform, relating to matter with reference to which the law gives no specific direction. The object to be accomplished is the collection from the insurance company of the amount named in the law. Any rule or regulation, uniform and reasonable, which will accomplish that object is a fulfillment of the law. After the payment of the minimum fee and the issuance of the license, the subsequent payments for excess premiums appear therefore, to be rather current business. It appears from the statement contained in the letter of Mr. McCoy that this company over paid for the year 1914, and that it now desires to be recompensed for such over payment, either by returning to them the amount so overpaid, or continuing it as a current item, and giving them credit for the present year. The amount of business which the company expects to do is rather an estimate prior to the time when the business is actually done; hence, a company might deposit with you, or rather pay in advance for the business it intends to do; but at the close of the year, it might be found that the amount so paid was in excess of the amount required to be paid. In such a case the amount paid to you would be held by you rather as a bailee, or as a deposit made with you in advance to secure moneys which would belong to the state in case of business so actually done by the insurance company.

I believe that from the fact that the law is not specific, your department is vested with authority to establish uniform rules and regulations which will give effect to the law, and those rules may provide for making final settlement with the company at a specific time, so that the books are closed at that time as to all past transactions. You also have authority to provide for the final settlement and adjustment of moneys paid by the insurance company at times to be determined by you, so that in the present case, unless such a course would be contrary to your rules and established usage, you have the authority to make the adjustment of the matter of any difference with the Montana Fire Insurance Company by continuing their over payment, if such exists, as a credit for the present year. To do this, however, the State Examiner should be consulted, provided he has made examination of your books without knowledge of the existence of this claim for over payment, for if in the examination of your books, he charged your office with this full amount, and you later gave the company the credit

without advising the State Examiner, a discrepancy might appear to exist between his report and your books.

In view of the fact that the law is not specific, and seems to have vested in you the authority to adopt such business rules as will enable you to give effect to the law, I am not able to be any more specific than as above stated.

I return herewith the letter of Mr. McCoy.

Yours very truly,

D. M. KELLY,

Attorney General.