

he caused to be made of the method and manner in which an insurance company was re-insuring Montana risks.

June 12, 1936.

Hon. John J. Holmes
State Auditor and Ex-officio Insurance Commissioner
The Capitol

It appears from your letter to us of May 19, that in your official capacity you appointed Jack Lavanhar, chief examiner of the New York Insurance Department, to investigate the method and manner in which the Pearl Assurance Company of London, England, was reinsuring Montana risks. In due time Mr. Lavanhar reported in writing the result of his investigation. Certain citizens of the State are now desirous of obtaining certified copies of this report. As a consequence you have requested us to advise whether or not it is your duty under the law to furnish such certified copies.

Section 162, Revised Codes 1921, as amended by Chapter 153, Laws of 1927, provides that the State Auditor shall be ex-officio Commissioner of Insurance and that as such commissioner it shall be his duty "to enforce all the laws of the State relating to insurance." Section 6165, Revised Codes 1921, provides: "No fire insurance company or association shall reinsure, in any manner whatsoever, the whole or any part of a risk taken by it on property situated or located in this state in any other company or association not authorized to transact business in this state. No fire insurance company or association shall transfer or cede, in any manner whatsoever, to any company or association not authorized to do business in this state, any risk or liability, or any part thereof assumed by it, under any form of contract of insurance covering property located in this state, including any risk or liability under any general or floating policy, or any agreement, general, floating or specific, to reinsure excess loss by one or more fires. No fire insurance company or association shall reinsure, or assume as a reinsuring company, or otherwise, in any manner or form

Opinion No. 301A.

**Offices and Officers—Public Records
—Public Writings—Insurance
—State Auditor.**

HELD: 1. "Public Records" and "Public Writing" are discussed and defined.

2. The State Auditor, as ex-officio Commissioner of Insurance, is not required by law to furnish to private individuals certified copies of a report

whatsoever, the whole or any part of any risk or liability covering property located in this state, of any insurance company or association not authorized to transact business in this state." Section 6168 provides: "Any insurance company or association wilfully violating or failing to observe and comply with any of the provisions of this act, applicable thereto, shall be subject to and liable to pay a penalty of five hundred dollars for each violation thereof, and for each failure to observe and comply with any provisions of this act; such penalty may be collected and recovered in an action brought in the name of the state in any court having jurisdiction thereof. Any insurance company or association which shall neglect and refuse, for thirty days after judgment in any such action, to pay and discharge the amount of such judgment, shall have its authority to transact business in this state revoked by the state auditor, and such revocation shall continue for at least one year from the date thereof; nor shall any insurance company or association whose authority to transact business in this state shall have been so revoked be again authorized or permitted to transact business herein, until it shall have paid the amount of any such judgment and shall have filed in the office of the State auditor a certificate, signed by its president or other chief officers, to the effect that the terms and obligations of the provisions of this act are accepted by it as a part of the conditions of its right and authority to transact business in this state."

It may be safely assumed, then, that in appointing Lavanhar as his agent, under the circumstances, the Commissioner of Insurance was anxious to learn whether or not the Pearl Assurance Company was violating or had violated the provisions of Section 6165 and, if so, to invoke the provisions of Section 6168 against it.

If this report be a public record or a public writing then Sections 455, 10542 and 10543, Revised Codes 1921, are applicable. (*Whelan v. Superior Court*, 46 Pac. 468; *Harrison v. Powers*, 127 Pac. 818; *Coldwell v. Board of Public Works*, 202 Pac. 879; *Findley v. Industrial Accident Commission*, 241 Pac. 912; *State v. Grace*, 5 Pac. (2d) 301; *Fox West Coast Theaters*

v. Industrial Commission, 7 Pac. (2d) 582; *State v. Keller*, 21 Pac. (2d) 807.) These sections read as follows:

"Section 455. The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person. In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint, or the issuing of such attachment, until after the filing of return of service of attachment.

"Section 10542. Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute.

"Section 10543. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

But is the report in question a public record or a public writing as defined by law? "Public records" and "public writings" mean the same thing. They are interchangeable terms and convey the same idea. (53 C. J. 604; *Steiner v. McMillan*, 59 Mont. 30; *Evans v. District Court*, 293 Pac. 323.) Public writings are the written acts or records of the acts of the sovereign authority of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country and they are also public records, kept in this state, of private writings. (Section 10540, R. C. M. 1921.) They are divided into four classes: (1) laws; (2) judicial records; (3) other official documents, and (4) public records, kept in this state, of private writings. (Section 10544, R. C. M. 1921.) It must be conceded that the report is not a law, a judicial record, or a public record kept in this state of a private writing. (*State v. Yegen*, 74 Mont. 126.) If it is a public writing, then, it must be because it is included in the class of "other official documents."

Section 166, Revised Codes 1921,

provides: "The commissioner of insurance shall examine and inquire into violations of insurance laws of this State, and for this purpose, or to see if the laws are obeyed, or to examine the financial condition, affairs, and management of any insurance company, including surety companies, organized under the laws of this State, or any other state or territory, or foreign country, he may visit, or cause to be visited, by any competent person or persons he may appoint, the head office in this state, or in the United States, of any domestic or foreign insurance company applying for admission to or already admitted to do business in this state, and may for these purposes examine or investigate any company organized under the laws of Montana, and any agency of any company doing business in this State. * * *." Section 167, provides that "when the commissioner of insurance deems it to the interest of the public, he may publish the result of any examination or investigation in a newspaper of general circulation published at the state capital." It is reasonable to infer from the language just quoted that unless the commissioner considers it proper, in the public interest, to publish a report of this kind it remains a private writing in his office and cannot be classed as an official document to which the public may have access. (Section 10539, R. C. M. 1921; *State v. Ray*, 88 Mont. 436; *Whelan v. Superior Court*, supra; *State v. Freedy*, 223 N. W. 861; *People v. Harnett*, 226 N. Y. S. 338).

It is our conclusion, therefore, that the State Auditor, as ex-officio Commissioner of Insurance, is not required by law to furnish certified copies of the report in question to private individuals.