

ants, whose services are paid for by the insurance department.

Assistants whose services are not paid for by the insurance department, employed by the insurance commissioner, are entitled to per diem and expenses in making examinations of insurance companies.

The fee or expenses charged for examination of insurance companies should not be deposited in the general fund. Payments should be made direct to the persons who are entitled to them.

Under the provisions of Section 166, R. C. M. 1935, the report of the examination and the duplicate receipts, duly certified, should be filed with the insurance commissioner. Such report and receipts should be so filed when there is a convention examination.

February 4, 1939.

The Honorable Charles P. Cotter
The State Senate
Capitol Building
My Dear Senator:

You have submitted the following request:

"I desire your official opinion on the following matter:

"Section 166 of the Political Code provides for the examination of insurance and insured companies by the Commissioner of Insurance, and further makes provision that the cost of the examination shall be paid by the company examined.

"1. In the event that the examination is made by a Commissioner of Insurance or his deputy or assistants, is it permissible for him to charge an examination fee of Ten Dollars (\$10.00) per day, or any other amount other than actual expenses incurred by the examining officer?

"2. If a fee or expenses are charged, should the proceeds thereof be deposited in the General Fund and paid by a claim drawn up on the Insurance Fund to reimburse the commissioner or his assistants for their expenses?

"3. Under the provisions of the Act, should a written report of the examination, accompanied by duplicate receipts, duly certified, be filed in the Insurance Department?

Opinion No. 19.

Insurance Commissioner—Examination of Insurance Companies—Compensation and Expenses of Examiners—Filing of Reports of Examination and Duplicate Receipts.

HELD: The insurance commissioner may not charge per diem for services of himself, his deputy or assist-

"4. If the examination is participated in as a convention examination, should a written report with certified receipts be filed with the Insurance Department?"

I shall answer your questions in the above order.

1. Section 166, R. C. M. 1935, in part, reads as follows:

"* * * The cost of such examinations shall be paid by the company examined, and shall include the (1) reasonable expenses of the commissioner, his deputies, and assistants employed therein, whose services are paid for by the insurance department, and (2) the compensation and reasonable expenses of his assistants employed therein whose services are not paid for by the department. Duplicate receipts showing the entire cost of the examination authorized by the commissioner of insurance shall be taken and certified to by the company examined, and shall be filed in and become a part of the public records of the insurance department." (Figures in parenthesis supplied.)

The commissioner of insurance may not charge a per diem fee for himself, or his deputies, or assistants, whose services are paid for by the insurance department. The above quoted language, however, does contemplate and permit the payment of "compensation and reasonable expenses" to such assistants as are employed by him, whose services are not paid for by the insurance department. The fact that duplicate receipts shall be taken and certified to by the company examined, and filed in the insurance department, also indicates that payment of per diem and expenses is made direct to the assistants and not to the insurance commissioner. It should be added, however, that the statute does not fix the per diem fee to be charged, and more or less than \$10.00 may be charged by such assistants or, in other words, whatever is reasonable in the circumstances.

2. In my opinion your second question should be answered in the negative. As stated above, the per diem and expenses of assistants are paid directly to the assistants whose services are not paid for by the department.

In the absence of any provision in the statute requiring it, it is also my opinion that the reasonable expenses of the insurance commissioner, or his deputies and assistants, whose services are paid for by the insurance department, should be paid direct to the person or persons who incurred such expenses. This also seems to be implied from the requirement that duplicate receipts, duly certified, shall be filed in the insurance department. We see no need for such money being deposited in the general fund; on the other hand, there is good reason why it should not be so deposited for in that event an appropriation would be necessary in order to permit the state treasurer's paying it out. (See Section 10, Article XII and Section 34, Article V of the Montana Constitution.)

3. In my opinion this question should be answered in the affirmative. The last sentence of the language of the statute quoted above expressly provides that duplicate receipts, duly certified, shall be filed in the insurance department. As for the report of the examination, it should likewise be filed for the reason that the purpose of the examination is to obtain information for the insurance commissioner and such information, to be available, should be filed in his office.

4. This question should also be answered in the affirmative. No exception should be made in the case of a convention examination. The same provision of the statute and the same principles apply. Such convention examination is made under authority of the insurance commissioner and he should have the report of the examination filed in his office, as well as the duplicate receipts.