

No. 140

**COMMISSIONER OF INSURANCE—EXPENSES—OUT-
OF-STATE TRAVEL EXPENSES**

Held: Expenses of Commissioner of Insurance and deputies incurred under Section 166, Revised Codes of Montana, 1935, are not limited by the provisions of Chapter 92, Laws of 1941, but an account of such expenses should be made to the Board of Examiners for their approval as to reasonableness.

June 9, 1941.

Honorable John J. Holmes
State Auditor and Ex-Officio
Commissioner of Insurance
State Capitol
Helena, Montana

Dear Mr. Holmes:

You have requested my opinion as to whether or not expenses incurred by yourself and your deputy in making an examination authorized under the provisions of Section 166, Revised Codes of Montana, 1935, are governed by the provisions of that section or of Section 459.1, as amended by Chapter 92, Laws of 1941.

You call my attention to the following provisions of Section 166, as pertinent to the question here in issue:

"The Commissioner of Insurance shall examine and inquire into violations of insurance laws of this state, and for this purpose . . . he may visit . . . the head office . . . in the United States, of any . . . foreign insurance company . . . The cost of such examination shall be paid by the company examined and shall include the rea-

sonable expenses of the Commissioner, his deputies, and assistants employed therein, whose services are paid for by the Insurance 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. . . .”

Section 459.1, as amended by Chapter 92, Laws of 1941, provides in part as follows:

“Every person engaged in any service in every department . . . who may be sent by any unauthorized executive of any department of the State upon a mission in performance of any clerical work, investigating . . . shall make an itemized statement tersely stating in what capacity engaged each day while away from the department in which said daily duties may arise and the expense incurred daily and shall render to the Board of Examiners the said itemized statement and at the end of each month, or if sooner required by said Board, the said person, so engaged shall render a total or recapitulation account thereof in a form to be prescribed by said Board; provided that in all cases such expenses other than railroad fare, bus fare, or automobile hire shall be limited to not more than four dollars (\$4.00) per day. The foregoing limitations of expenses shall not apply to elective officers, their deputies or assistants specifically provided by law, while engaged on official state business outside of the State of Montana, and in such case, the Board of Examiners may allow such actual expenses as in their judgment are reasonable in amount not to exceed eight dollars (\$8.00) per day.”

Prior to the amendment of 1941, there was no limit on the amount allowed as expenses for out-of-state business, except it was provided the Board of Examiners “may allow such actual expenses as in their judgment are reasonable in amount.” By the amendment, the Legislature has determined that \$8.00 per day is a reasonable amount.

It will be noted the Legislature in one instance has said the expenses shall be a reasonable amount, while in the other it has said such reasonable amount shall not exceed \$8.00 per day.

Section 166 is a special act dealing in part with the same subject as Section 459.1, to wit, expenses of state officers and employees attending to state business outside the state, but relates to a specific service, that is, examination of insurance companies. Section 459.1 is a general statute, dealing with the question of expenses of state officers and employees in general.

Where one act deals with a subject generally, and another with part of the same subject, the two must be read together and harmonized, if possible, but to the extent of any necessary repugnancy between them, the special statute prevails. (See *Stadler v. City of Helena*, 127 Pac. 454, 46 Mont. 128; *Daley v. Torrey*, 230 Pac. 782, 71 Mont. 513; *Franzke v. Fergus County*, 245 Pac. 962, 76 Mont. 150.)

The statutes in question—although dealing with the same subject in part—are to the extent of definitely limiting the amount of expenses repugnant to each other; and to this extent, the special statute, Section 166, prevails over the general statute.

However, when one reads these two statutes together, it is apparent the Legislature intended the expenses incurred in either case shall only be an amount which is reasonable.

I have said these two statutes are repugnant to the extent of the limit of amount of expenses. They are not, however, repugnant in providing such expenses shall be reasonable amounts. Having provided in Section 166 the amount must be a reasonable amount, it follows the reasonableness thereof must be determined in the manner set forth in Section 459.1, as amended; and accounts for expenses incurred under the

provisions of 166, while not limited to \$8.00 per day, should be presented to the Board of Examiners for approval as to the reasonableness thereof.

It is therefore my opinion expenses incurred under Section 166 are not governed by the provisions of Chapter 92, Laws of 1941, but accounts of such expenses should be submitted to the Board of Examiners for approval.

Sincerely yours,

JOHN W. BONNER
Attorney General