

No. 373

**INSURANCE—FIRE INSURANCE—STATUTES—
CASUALTY INSURANCE**

Held: Effect and operation of statute must be considered in determining procedure and where any legitimate function of state executive officer is hampered or destroyed by acting thereunder, Legislature may provide effective machinery for effective operation.

March 17, 1942.

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

Dear Mr. Holmes:

In Opinion No. 362, Vol. 19, Report & Official Opinions of the Attorney General, I advised you that, while casualty companies might be admitted to write fire coverage on automobile risks, such coverage being incidental to casualty coverage, your authority was such that the payment of a premium tax, required of a fire insurance company, might be demanded as a condition for the granting of the right to the casualty company.

Since the rendition of this opinion, you have directed my attention to administrative problems with which your office is confronted if it is to follow my opinion. The facts you now suggest were not before me when Opinion No. 362 was prepared and released.

In substance, you state the course of action required of you by Opinion No. 362 will "utterly nullify and make impossible the performance" of your mandatory duties prescribed by the Political Code with reference to collection and disbursement of fees and charges. You point out, further, your available funds will be jeopardized and precariously depleted by the cost of a new annual report form necessitated by the opinion, as you have heretofore been able to use the standard annual report form promulgated and adopted by the National Association of Insurance Commissioners at a low cost per copy.

It is not the policy of this office to render opinions which will seriously cripple or destroy any of the legitimate functions of an executive branch of state government such as yours. It is apparent—from the facts you relate—such a result might occur if the opinion is to be followed.

It becomes important, then, to examine your duty with respect to your course of action under this opinion. Considerations of what is reasonable, convenient or causes hardship or injustice have a potent influence in many cases. The effect and operation of the statutes, as interpreted by the opinion, must be considered. (State ex rel. Malott v. Board of Commissioners, 89 Mont. 37, 296 Pac. 1; Bankers' Union Life Insurance Company v. Read, 182 Okla. 103, 77 Pac. (2nd) 26.) The consequences here are such that to follow the interpretation given by the opinion will work undue hardship.

It is my opinion, therefore, you may refuse to permit casualty companies to write fire insurance at all, even though the coverage may be incidental to the casualty business written. Until the Legislature sees fit to provide the statutory machinery necessary to make the duties imposed by the opinion possible of performance, you are, for practical administrative reasons, powerless to act pursuant thereto.

Sincerely yours,

JOHN W. BONNER
Attorney General