

Michael P. Riley
Eugene G. Bushmann
James W. Gallaher
Lori J. Levine
Rudolph L. Veit
Michael Madsen
R. Max Humphreys
Mark A. Ludwig*
Dana L. Frese
Edward C. Clausen
Carla G. Holste
Douglas W. Hennon
Charles J. McPheeters
Paul Graham
Charles A. "Chip" Gentry

Carson & Coil, P.C.

LAW OFFICES

P.O. Box 28
515 East High Street
Jefferson City, Missouri 65102
(573) 636-2177
(573) 636-7119 (fax)
www.carsoncoil.com

Jason L. Call*
Roya R. Hough
Amy D. Salladay

Ronald R. McMillin
Of Counsel

Forrest P. Carson
(1910-1981)
Cullen Coil
(1907-1989)

*Also licensed in Illinois

June 16, 2003

FILED

JUN 17 2003

Missouri Public
Service Commission

RECEIVED

JUN 17 2003

Dale Hardy Roberts, Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
VIA Fax: 573-526-6010

Adjudication Division
Public Service Commission

MX-2003-0187

Re: Manufactured and Modular Home Inspection Fees

Dear Mr. Roberts:

I represent the Missouri Manufactured Housing Association and have been asked to comment upon a staff proposal to implement inspection fees created by Rule 4 CSR 240-120.135 and Rule 4 CSR 240-123.075. This proposal is on the Commission agenda for Tuesday, June 17, 2003 and the Association would appreciate it if you would circulate a copy of this letter to the Commission.

The Association has asked that I bring to the Commission's attention the agreement which is contained in the Rules the staff proposes to implement. That agreement, which is specifically stated in each rule, is as follows:

"If current legislation and rule making proposals involving current fee structure increases are enacted, the commission will rescind the inspection fee rule."

Also each of the rules contain the following language:

"As stated above, it has been agreed that if proposed legislation is enacted, and proposed rule making is approved and published, then the commission will rescind the proposed inspection fee rules."

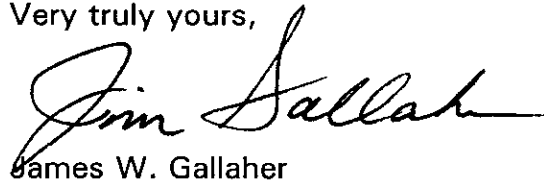
During the 2001 legislative session the Commission and its staff were seeking additional funding. Additional funds were sought through legislative means (Senate Bill 317) and by ruling making means. The Commission agreed that if the Association supported the fee increases contained in Senate Bill 317 and the non-inspection fee increases contained in the proposed rules, upon passage of Senate Bill 317 and enactment of the non-inspection fee rules, the Commission would rescind the inspection fees. Acting in good faith and in the reliance upon the agreement the Association supported the fee increases. In 2001 Senate Bill 317 became law and the rules were published and approved. The Commission then had a duty to rescind the inspection fees.

It now appears that the staff is recommending to the Commission that it "break" its agreement to rescind the inspection fees. This ignores the legal obligation of an agency to follow its own rules. "An agency is compelled to comply with its rules duly promulgated pursuant to properly delegated authority as such rules have the force and effect of law and are binding upon the agency adopting them." *Prenger v. Moody* 845 S.W.2d 68, 78 (Mo.App. W.D 1992). The Commission must follow its own rules and regulations and it cannot in the face of this rule impose the inspection fees. The Commission had the benefit of its "bargain" when it gained the Association's support for the fee increases contained in Senate Bill 317 and in its package of other fee increases. Staff's recommendation to implement the inspection fee is poor public policy and it violates the law.

On behalf of the Association I ask the Commission to direct the PSC staff to take the steps necessary to formally rescind that portion of the above referenced rules which pertain to inspection fees.

On behalf of the Association I thank you for your consideration of the matters raised in this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jim Gallaher", written in a cursive style.

James W. Gallaher

JWG:kcg