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INSURANCE: Insurance Agents -- Office Agents.

Act 143, P.A. 1935, giving preference treatment to those insurance agents who have been office agents for an insurance company is unconstitutional because a denial of equal protection of the law.

Act 143, P.A. 1935, having been enacted to apply to office agents at that time, appears to have become inoperative and has no present day application.

No. 4340 December 29, 1964.

Mr. Allen L. Mayerson
Commissioner of Insurance
Lansing, Michigan

You have requested an answer to several questions concerning Act 143, P.A. 1935,[1] as follows:

1. Was Act 143 impliedly repealed by the adoption of the Insurance Code of 1956? If not:

2. Does Act 143 apply only to unpaid balances only as of the effective date of the act as in 1935?

3. What is an "office agent"?

4. Is a general agent of the company, maintaining his own office and paying his own expenses, an office agent?

5. If such an agent has such a right of set-off, is this right applicable to collected premiums in the hands of the agent which are fiduciary funds by agreement or by section 1456 of the Insurance Code?

6. Do the provisions of section 3 of said act, providing that the act is supplemental to the "existing laws" prohibit the application of said act to matters arising under the Insurance Code of 1956?

Because of its brevity, I am setting forth the act in full (it has never been amended since its enactment in 1935):

"Sec. 1. Any insurance agent, who has been the office agent of an insurance company taken over by the commissioner of insurance or an insurance company in the hands of a receiver, may off-set against any balance unpaid and owing such insurance company the damages resulting to such agent, and his insurance business, due to the taking over of such company by the commissioner of insurance or the placing of such company in the hands of a receiver.

"Sec. 2. The provisions of this act shall apply to any balances unpaid and owing any such insurance companies at the time this act shall take effect, as represented in moneys uncollected by the agent and moneys collected by the agent and deposited in banks now closed, and shall apply to all actions at law or in equity to recover said unpaid balances which are pending in the courts of this state at the time this act shall take effect.

"Sec. 3. This act shall be construed as supplemental to the existing

[1] M.S.A. § 24.151, et seq.; C.L. 1948 § 550.231, et seq.

laws of this state governing insurance companies and insurance agents, and insofar as inconsistent shall supersede said laws."

Since the first codification of the insurance laws by Act 256, P.A. 1917,[2] agents have been statutorily defined and classified as general, district, state or special agents, or simply as agents.[3] This latter classification has been refined to distinguish between resident and non-resident agents.[4] There has never been a statutory definition of or reference to an "office agent," except, of course, in the act in question.

The legislature did not expressly define the term "office agent" for the purposes of Act 143, P.A. 1935, supra. It is proper to assume that the legislature was fully aware of the types of insurance agents which it had permitted to be licensed in Michigan under Act 256, P.A. 1917, when the legislature enacted Act 143 in 1935. *People v. Buckley,* 302 Mich. 12, 21. Reference to section 3 of the act makes this abundantly clear.

Since an "office agent" was not recognized and could not have obtained a license in Michigan under that designation at the time of the adoption of Act 143 in 1935, it is apparent that the legislature, by the use of the term "office agent," was referring to something other than the type of license from the State held by the individual to whom the provisions of Act 143 were made applicable.

The intent of the legislature to be ascertained is that of the particular legislature which enacted Act 143, P.A. 1935. *Dewar v. People,* 40 Mich. 401, 403.

Words that are employed by the legislature in a statute are to be construed in the sense in which they are understood in common language, taking into consideration the text and subject matter relative to which they are employed. *Reetz v. Schemansky,* 278 Mich. 626, 631, quoting *Stocin v. C. R. Wilson Body Co.,* 205 Mich. 1.

While the title to Act 143, P.A. 1935, by its terms would appear to make it applicable to all insurance agents, the legislature, in the enactment of section 1 of the act, chose to restrict its application to any insurance agent who has been the office agent of an insurance company taken over by the Commissioner of Insurance or of an insurance company in the hands of a receiver. Thus, it appears that the scope of the statute is more restrictive than its title. Resort may be had to the title in order to assist in

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[2] That act has been repealed by Act 218, P.A. 1956, commonly referred to as the Insurance Code of 1956, being C.L.S. 1961 § 500.100, et seq.; M.S.A. Rev. Vol. 1957 § 24.1100.

[3] Section 1, Chapter III, Part Two of Act 256, P.A. 1917, reads in pertinent part as follows:

"A general, district, State or special agent is hereby defined to be a person, firm or corporation acting under authority from any insurance company, to supervise and appoint agents, inspect risks, and otherwise transact business for and as a representative of such insurance corporation. ***. An agent is hereby defined as a person, firm or corporation acting under written authority from any insurance company to solicit insurance and/or write and countersign policies of insurance and collect premiums therefor ***."

[4] See § 1412 of the Insurance Code of 1956.

the construction of a statute. *Lakehead Pipe Line Co., Inc. v. Dehn,* 340 Mich. 25, 34, and authorities there cited.

Such a review of the statute compels the conclusion that Act 143, P.A. 1935, applied only to those insurance agents who were office agents of an insurance company taken over by the Commissioner of Insurance or an insurance company in the hands of a receiver.

It is my view that the term "office agent" was used by the legislature to refer to the relationship between a licensed agent and his company and was intended to embrace a licensed agent who had been furnished and occupies an office or desk on a full or part time basis in the home office of the insurance company or in one of its branch offices. Because he was in the office of the company he came to be known as an office agent.

Also, it is to be remembered that the year 1935 was still one of the depression years which reflected the condition of the nation's economy following the stock market crash in 1929. To one who has an understanding of the lack of ready cash in those years due to bank failures, it is easy to conceive that some licensed insurance agents were not able to meet the expense of maintaining their own agency office and consequently sought an arrangement by which they could continue their chosen occupation without being obligated to meet the expenses of an independent office. Such an explanation of the meaning of the term "office agent" makes it applicable to the relationship existing between a licensed agent and his company and is a reasonable construction of the intent of the legislature. It does not create a new class of insurance agents separate and distinct from those individuals holding a license from the State pursuant to the provisions of the Insurance Code. In support of the foregoing conclusion, it is to be noted that Act 143, P.A. 1935, did not attempt to amend the Insurance Code as is readily demonstrable by an examination of its title.

When placed in the foregoing framework, Act 143, P.A. 1935, is clearly unconstitutional. That act attempts to give preferential treatment in the payment of unpaid balances and to grant a set-off for damages to a small group of insurance agents who could qualify as "office agents" because of their relationship with an insurance company which had been taken over by the Insurance Commissioner or which had been placed in receivership. There is no reasonable basis for such a classification. Obviously, an insurance agent who had his place of business in his own building or in space rented by him was as likely to owe an unpaid balance to the insurance company as would an agent having an office or desk in the company office if not more so. Correspondingly, the likelihood of resulting damages to an agent owning or renting space for his own office would be as great or greater than the resulting damages of the so-called "office agent." To allow preferential rights to the one, not also available to the other, is to deny equal protection of the laws.

The class with which we deal is that of insurance agents recognized and licensed under the Insurance Code. From that class the legislature, by Act 143, P.A. 1935, undertook to give a special group designated as office agents preferences and rights not granted to all other agents. The type of relief given to this group has no special significance as to them as distinguished from the others, and the financial dilemma and possible resultant

damage from the distress of the insurance company would be common to all of its underwriters.

The governing rule has been stated by our Supreme Court in the case of *Palmer Park Theatre Company v. City of Highland Park,* 362 Mich. 326, at page 347, as follows:

> "The general rule is stated in *Mulloy v. Wayne County Board of Supervisors,* 246 Mich. 632, 638, wherein this Court quoted with approval the following language:
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> " 'The classification must be based upon substantial and real differences in the classes, *which are germane to the purpose of the law and reasonably suggest the propriety of substantially different legislation,* the legislation must apply to each member of the class, and the classification must not be based on existing circumstances only, but must be so framed as to include in the class additional members as fast as they acquire the characteristics of the class.' *Bingham v. Board of Supervisors,* 127 Wis. 344 (106 N.W. 1071)."
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> "In *Haynes v. Lapeer Circuit Judge,* 201 Mich. 138, 141, 142 (L.R.A. 1918D, 233) this Court said:
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> " 'It is elementary that legislation which, in carrying out a public purpose for the common good, is limited by reasonable and justifiable differentiation to a distinct type or class of persons is not for that reason unconstitutional because class legislation, if germane to the object of the enactment and made uniform in its operation upon all persons of the class to which it naturally applies; *but if it fails to include and affect alike all persons of the same class, and extends immunities or privileges to one portion and denies them to others of like kind,* by unreasonable or arbitrary subclassification, it comes within the constitutional prohibition against class legislation.' (Emphasis supplied)."

I have made inquiry of officers of several prominent insurance companies in the industry to ascertain if the status of "office agent" still persists. I have been informed that there is no such designation currently in use nor is the relationship prevalent. If as used in 1935 when Act 143 was enacted the provisions of that act had meaning because of the conditions in the insurance industry as of that time and which no longer prevail, and if the term "office agent" no longer has significance in the industry, then Act 143, P.A. 1935, would no longer be valid under the rule announced by our Supreme Court in the *Palmer Park Theatre Company Case,* supra, where the court said:

> " 'A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed.' " (page 348).

In view of the foregoing conclusion, your questions become academic.

FRANK J. KELLY,
Attorney General.