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INSURANCE: Group rated automobile insurance.

Proposed plan of insuring individual drivers for automobile insurance on a group rated basis is not prohibited under Michigan Insurance Code of 1956. Rating provisions of Michigan Insurance Code of 1956 permit the group rating plan to be considered in establishing rates, provided that measurable savings in expenses can be demonstrated.

No. 4584 - February 12, 1968.

Mr. David Dykhouse
Commissioner of Insurance
111 N. Hosmer Street
Lansing, Michigan

You have advised me that the Community Service Insurance Company proposes to provides employees of the Michigan Credit Union League with a program of private passenger automobile insurance coverage on a group basis. The employer intends to make a partial payment toward the premiums for said policies and to collect the remainder of the premium from the employees by means of payroll deductions.

Briefly, the proposed plan will work as follows: Each employee will select the coverage he desires from among twenty options and will receive an individual insurance policy, including individual declarations of coverage. The plan contemplates that premiums will be based upon group ratings and that the economies of group purchasing and the collection of premiums by the employer through payroll deduction should result in lower premiums on the average. It is also understood that there will be no solicitation by the employer.

Under group life and group disability insurance, the contract of insurance, represented by a master policy, is between the insurer and the employer. Although there may be a written or parole agreement between the insurer and the employer whereby the employer agrees to collect the premiums through payroll deduction and remit them to the insurer as well as contributing a portion of the premium, the contract of insurance, represented by an individual policy, is between the insurer and the individual employee.

This opinion, therefore, will substitute language in your questions to indicate that individual insurance is involved with rating for such insurance to be on a group basis.

Turning to the questions you have raised with regard to the proposed plan of group rated automobile insurance, you question whether such insurance is legally permissible under the Michigan Insurance Code of 1956.[1] Specifically, you wish my opinion as to whether Section 624 (1) (b) of the Michigan Insurance Code of 1956 [C.L.S. 1961 § 500.624; M.S.A. § 24.1624(1)(b)] would prohibit the writing of the coverages contemplated in this plan. Said section permits the following type of liability insurance to be sold:

[1] Act 218, P.A. 1956 as amended, being C.L.S. 1961 § 500.100 et seq.; M.S.A. 1957 Rev. Vol. § 24.1100 et seq.

"Insurance of any person, partnership, or corporation against loss or damage on account of the bodily injury or death by accident of any person, or against damage caused by automobiles, vehicles or draft animals to property of another, for which loss or damage said person, partnership or corporation is responsible, or against accidental damage sustained by automobiles or vehicles, or against all of the said contingencies, inclusive of workmen's compensation insurance."

Your letter points out that in a group automobile coverage situation, it would be the group that would be insured through a master policy between the insurer and the employer. You contend that the employer, whether it be a partnership or corporation, would not be responsible for the loss or damage caused by an employee with his own automobile outside the scope of his employment. However, the proposed plan does not seek to insure the employer but, instead, insures each employee by means of a policy of automobile insurance issued to each employee. Thus Section 624(1)(b), *supra,* is not circumvented in any manner.

Consideration has also been given to the existence of statutory language with regard to both group health and group life policies issued in the State of Michigan. It must be pointed out that this statutory language did not authorize or enable the issuance of group life and group health insurance policies in the State of Michigan but rather regulated their issuance inasmuch as both forms of policies were issued in this state prior to any legislative enactments. In a somewhat analogous situation, the California District Court of Appeals in *State Compensation Insurance Fund v. Industrial Accident Commission, et al.,* 132 P. 2d 890 (1942), dealt with the question of the legal authority of an insurer to issue a group workmen's compensation policy without the existence of any statutory language authorizing the issuance of such a policy. In this regard the court stated at page 894:

"The petitioner contends: That groups as such may not be covered by a single policy of workmen's compensation insurance, that the Legislature having made specific provision for group insurance in two instances, and not having made any provisions for group workmen's compensation insurance, it may be implied therefrom that it was not the intention to so provide. That is a misconception of the law. In the absence of statutes on the subject, persons, partnerships, and corporations may write insurance. 32 C.J. 981 and 1004. The Legislature may regulate the business. In this state it has done so in some particulars. But counsel have not cited, and we have not seen, any statute that purports to prohibit the issuance of such policies as the one in suit.

* * *

"As stated hereinabove, in the absence of statutes on the subject, persons, partnerships and corporations may write insurance. 32 C.J. 981 and 1004. The provisions and conditions of a contract or policy of insurance should not be in contravention of law or public policy. 32 C.J. 1107. The policy in suit was not in contravention of law or public policy, and therefore such contracts may be written by any insurer. . . ."

I cannot find in the case at hand that the proposed group rated automobile liability insurance plan is in contravention of law or public policy. Therefore, the insurer may legally issue such a policy.

Your next inquiry is whether an employer may contribute all or part of the premium under the proposed plan. There is no prohibition set forth in the Michigan Insurance Code of 1956 or elsewhere which would prevent the employer from contributing all or part of the premium under such a plan. This is a matter of contract between the employer and employees and they are free to contract to this effect in the absence of a legal prohibition.

Your next question is restated as follows:

> Can an individual, who is eligible to participate in the group rated automobile insurance plan because of employment station or affiliation with an eligible organization, be required to participate in the group rated automobile insurance plan?

As noted above, whether an employee participates in the proposed insurance plan is a matter of free choice of the employee. If he does not choose to avail himself of the automobile insurance under the proposed plan, he cannot be required to participate.

Your next question is restated to read:

> If group rated automobile insurance is legally permissible and the Commissioner of Insurance may consider such for filing, is group rated automobile insurance subject to regulation under the Michigan Insurance Code?

As indicated above, what is involved here is individual automobile insurance purchased on a group basis with group rating; therefore, all the regulatory provisions set forth in the Michigan Insurance Code of 1956 with regard to individual automobile insurance are applicable to this situation, including all provisions of the Michigan Insurance Code of 1956 dealing with the rates which may be charged.

Your next question reads:

> "Does the Michigan Insurance Code permit risks to be grouped by classifications based upon an employment station or an affiliation with an eligible organization for the purpose of establishing rates and minimum premiums?"

The answer to your question is "yes."

Section 2403(1)(c) [C.L.S. 1961 § 500.2403; M.S.A. 1957 Rev. Vol. § 24.12403] provides as follows:

> "Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which measure variations in hazards or expense provisions, or both. Such rating plans may measure any differences among risks that may have a porbable effect upon losses or expenses as provided for in subdivision (a) of subsection (1) of this section."

This section contemplates that variations in expense provisions may be taken into consideration in determining rates. If in fact the acquisition expenses and collection expenses with regard to the proposed plan are measurably lower for each individual in the plan, then they are properly to be considered in determining the rate for the coverage.

Your next question as restated reads:

> Does the Michigan Insurance Code of 1956 permit a single company to establish two systems of expense provisions—one system for those purchasing group rated automobile insurance and another system for those purchasing nongroup rated automobile insurance policies?

Section 2403(1)(b) [C.L.S. 1961 §500.2403; M.S.A. 1957 Rev. Vol. § 24.12403] provides as follows:

> "The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable."

This language clearly contemplates that a single company may establish multiple systems of expense provisions.

This will be a subdivision of the insurer's business which will not reflect the same expense factors as the remainder of its business due to the contemplated lower acquisition expenses and premium collection expenses; therefore, separate expense provisions are applicable under these facts.

You also wish my opinion as to whether the proposed insurance plan would be unfairly discriminatory because individuals under the plan with the same risk characteristics as others outside the plan would purchase the same automobile coverages at different rates. This appears to be the central issue involved in determining whether group rated automobile liability insurance is legally permissible and has concerned insurance commissioners throughout the United States. This was brought out in a survey conducted by Irving M. Field of the School of Business Administration, University of Oregon. The results of this survey were made a part of his monograph, "Employee Group Property and Liability Insurance," University of Oregon Business Publications No. 1, (1967). At page 27 he states:

> "The insurance commissioners gave two principal reasons why group property and liability insurance has not been allowed to date—it is considered fictitious grouping and unfairly discriminatory. These reasons have caused problems. For example, a firm trying to institute a group property and liability insurance plan cannot understand why its employees are deemed a 'fictitious group' for group property and liability insurance purposes when, at the very same time, the employees are deemed a 'nonfictitious group' for life and health insurance purposes.
>
> "The 'unfairly discriminatory' wording tends to cause problems too. The opponents of group property and liability insurance contend that

if two individuals are identical according to rating characteristics, they should pay the same rate, and reducing the premium to one simply because he is a member of a group unfairly discriminates against the other who is not a group member. Conversely, it is contended that if two individuals (within a group) are not identical according to rating characteristics, they should not pay the same rate.

"Proponents of group insurance state that low cost group insurance has been allowed in life and health insurance for years, and that it is just as discriminatory not to allow a person in a group the benefit of the actual savings of expenses which accrue through the group process. They also are quick to point out that there would be a larger variance of pure life premiums in a group than of pure property and liability premiums. In addition, it could be pointed out that two individuals with identical rating classifications can also find discrimination in the current individual rating situation in most states if one simply places his insurance in a deviating company and the other in a company writing at state board rates. Thus, the problem of discrimination is an extremely complex, ever-present problem which can only be intelligently handled by a continuing, reasoned approach."

It is difficult to consider the proposed automobile insurance plan as unfairly discriminatory because individuals under the plan purchase insurance coverage at lower rates than those outside of the plan with the same risk characteristics when the provisions of Section 2019 of the Insurance Code of 1956 are studied.[2]

That section reads as follows:

"The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

"Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract."

There is a similar provision in Section 2020 of the Insurance Code of 1956, being C.L.S. 1961 § 500.2020; M.S.A. 1957 Rev. Vol. § 24.12020, with regard to health insurance. Despite the existence of both the sections, group rating for both health and life insurance has been consistently considered by the Insurance Commissioner as not constituting unfair discrimination between individuals with like risk factors.

Further, it does not appear possible that the risk within the group rated automobile liability insurance plan will be as diverse as those in a group rated life insurance plan. In this regard we quote from page 37 of the monograph of Irving M. Field op. cit., which quotes from an article by Richard M. Heins, "Extension of Group Marketing Principles to Property and Casualty Insurance," *The Annals of the Society of Chartered Property and Casualty Underwriters,* X No. 1, (January, 1958), at page 24:

"It is difficult to see how there could be more rate discrimination

[2] CL.S. 1961 § 500.2019; M.S.A. 1957 Rev. Vol. § 24.12019.

in the property and casualty field than in the life insurance field. Under existing flat-rated group plans, an employee age 20 now pays the same premium for life coverage as an employee age 65, where the probability of death is almost sixteen times greater for the man age 65. (According to the 1941 Commissioner's Standard Ordinary Mortality Tables the death rate per thousand at age 20 is 2.43 lives whereas at age 65 the rate is 39.64 lives.)"

More importantly however, the proposed plan would not be unfairly discriminatory because a reasonable classification exists which differentiates the individuals under the plan from other individuals. Persons purchasing their automobile insurance under the plan would be entitled to lower rates only because the rates would reflect lower expenses to the insurer in acquiring the business and in collecting the premiums thereon. To the extent that valid expense savings are derived under the plan, they may be reflected in granting lower rates for this coverage.

You wish to know whether Section 2403(1)(d) of the Michigan Insurance Code of 1956, *supra*, would require an insurer to provide insurance coverage to individuals at the same rates as provided to individuals in the group rated plan. As discussed above, the individuals in the group rated plan would be entitled to pay a lower premium commensurate to the savings in expenses to the insurance company.

Section 2403(1)(d) of the Michigan Insurance Code of 1956, *supra*, which states that "rates shall not be excessive, inadequate or unfairly discriminatory," does not prevent different rates to be charged to purchasers of identical insurance from the same company. It prohibits differences in rates which are not reasonably justified by the facts. Here the facts purport that there will be lower expenses to the insurance company in this subdivision of their business and, therefore, no unfair discrimination is involved. As you are well aware, insurers have many rates for the same coverage which they justify on the basis of individual underwriting. These different rates sometimes take the form of a surcharge, but in each case the individuals who pay the lowest rates do so only because tangible facts can be marshaled which justify the different treatment.

You also ask whether Section 2403(1)(d) of the Michigan Insurance Code of 1956 permits the establishment of different systems of expense provisions within the same insurance company for group rated automobile insurance and the individually rated automobile insurance resulting in the individually rated insured paying a higher expense factor.

The individually rated insured does not pay a higher expense factor because of the establishment of different systems of expense provisions within the same company. Rather, the different systems of expense provisions within the same company should result from the difference in expenses as to the various subdivisions of business. Therefore, each individual should pay premiums including expense factors which are directly correlated with the expenses in their subdivision of the insurance company's business.

Finally, you inquire whether, assuming further regulatory criteria for this type of business are needed to protect the public, regulatory criteria may

be established by the Commissioner of Insurance or must be established by the legislature.

No specific examples of the type of regulatory criteria you contemplate are furnished. Therefore, I can only answer that your powers to establish regulatory criteria by administrative regulations must rest on a sound statutory basis. If such a sound statutory basis is lacking, then the regulatory criteria must be established by the legislature.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Titles to Statutes.
STATUTES: Titles.
REAL ESTATE BROKERS: License Fees.

Section 16 of Act 251, P.A. 1967, which sets forth license fees for brokers and salesmen is unconstitutional since such object is not expressed in the title of the Act and the Act embraces more than one object contrary to the provisions of Article IV, Section 24 of the Constitution of 1963.

No. 4602 February 20, 1968.

Honorable E. D. O'Brien
State Representative
Capitol Building
Lansing, Michigan 48901

You have requested my opinion as to whether Section 16 of Act No. 251, Public Acts of 1967, is constitutional.

Act No. 251, effective July 19, 1967, makes appropriations for certain purposes. The title reads:

> "AN ACT to make appropriations for the department of commerce, the department of labor and the department of licensing and regulation and certain other state purposes for the fiscal year ending June 30, 1968; to provide for the expenditure of such appropriations; and to provide for the disposition of fees and other income received by the various state agencies."

Section 16 provides:

> "Notwithstanding any other provision of the statutes to the contrary, commencing January 1, 1968, the department of licensing and regulation is directed to issue the following real estate licenses on an annual basis and to charge the following fees therefor:
>
> (a) Original licenses
> Broker's, $30.00.
> Associate broker's, $30.00.
> Salesman's, $25.00.
>
> (b) Renewal licenses
> Broker's, $15.00.
> Associate broker's, $15.00.
> Salesman's, $10.00."