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MUNICIPALITIES: Police Officers.

INSURANCE: Liability coverage policies.

POLICE OFFICERS: Protection during riots.

Insurance companies have the authority to exclude coverage from policies upon the finding of the Insurance Commissioner that the exclusion does not violate any provisions of the Insurance Code or contain inconsistent, ambiguous or misleading clauses or contain exceptions or conditions that unreasonably or deceptively affect the risk purported to be assumed.

Comprehensive general liability insurance policies issued to cities afford no protection from liability to police officers for actions taken by them during riots.

No. 4685

April 24, 1972.

Hon. Warren N. Goemaere
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion with regard to whether insurance companies may place endorsements to liability coverage policies issued to municipalities which provide that the policies will not cover "bodily injury or property damage arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention or suppression of any of the foregoing."

Your specific interest, however, is with regard to whether such policies insure the liability of police officers. You have asked three questions:

1. Does an insurance company have the authority to issue an insurance policy to a city with an exclusion providing that the insurance does not apply to bodily injury or property damage arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention or suppression of any of the foregoing?
2. What protection from liability does an individual police officer have from the consequence of actions taken by him during a riot, civil commotion or mob action when he acts in the performance of his duties?
3. Assuming that the police officer acts in the discharge of his responsibilities without any aspect of negligence or bias, can he or the jurisdiction for whom he is working be denied the protection such insurance coverage is designed to provide?

The exclusion which you have submitted for my opinion was filed with the Michigan Insurance Bureau by the Insurance Services Office, which represents a large number of liability insurers. The filing of the endorsement took effect May 20, 1968 for all members and subscribers to the Insurance Services Office. Subsequent to the filing, all other liability insurers filed the same endorsement.

It was the position of the Insurance Services Office that such compre-

hensive general liability policies, when sold to cities, were not intended to cover liability arising out of riots and their suppression. As a result of the Detroit riot of 1967, various court suits were filed in which the liability of various officers of the City of Detroit was contested for failure to take proper action in suppressing the riots. The Bureau argued that no premium was included for riot suppression within the rate charged cities. Therefore, liability insurance carriers contend that they filed the exclusion endorsement in order to clarify the policies rather than to limit their coverage. The endorsements, of course, could only be added to new policies issued after the effective date of the endorsement.

Your first question concerns whether an insurance company can add the above described exclusion endorsement to new general liability policies issued to cities. Liability insurance is not defined in the Insurance Code, except as included within the definition of casualty insurance in Section 624(1)(b) [M.C.L.A. 500.624; M.S.A. 24.1624]. This definition would not assist in the discussion of the questions asked in your letter.

The Michigan Insurance Bureau is empowered under Section 2236 of the Michigan Insurance Code of 1956 to disapprove or withdraw approval of insurance forms. Section 2236(2) of the Michigan Insurance Code of 1956, being M.C.L.A. 500.2236; M.S.A. 24.12236, provides in pertinent part as follows:

“Upon written notice to the insurer, the commissioner may disapprove, withdraw approval, or prohibit the issuance, advertising or delivery of any such form to any person in this state if it violates any provisions of this code, or contains inconsistent, ambiguous or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy. * * *”

Unlike the mandatory coverage of riot-fire damage in the 165-line standard Michigan fire policy, there is no comparable requirement of riot coverage in liability policies. Therefore, the exclusion in question does not violate any provisions of the Michigan Insurance Code of 1956. Comprehensive general liability insurance policies already include fifteen broad exclusions. Examples of exclusions which existed prior to the riot exclusion are the following:

- (a) Bodily injury or property damage arising out of ownership or operation of automobiles or aircraft.
- (b) Bodily injury or property damage arising out of the transportation of mobile equipment by an automobile.
- (c) Bodily injury or property damage due to war, civil war, insurrection, rebellion or revolution or to any act or conduct incident to any of the foregoing.

The complete list of exclusions covers an entire page, and therefore it is not necessary to indicate the breadth of the combined exclusions. The additional exclusion for riot and suppression thereof was permitted because of the Insurance Services Office's contention that the rate did not include any premium for said protection and the policy was never intended by the insurers to offer said protection. Now that the endorsement has been universally adopted, it is deemed a “mandatory” exclusion and, in

order to obtain protection against riots and their suppression, it is necessary to pay an additional premium to purchase an endorsement excluding said exclusion.

It is the conclusion of the Michigan Insurance Bureau that the riot exception does not unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy. This administrative decision is subject to judicial review as provided by subparagraph (6) of Section 2236 of the Michigan Insurance Code of 1956.

In conclusion, the answer to your first question is that an insurance company has the authority to issue an insurance policy to a city with an exclusion providing that the policy does not apply to bodily injury or property damage arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention or suppression of any of the foregoing, provided that said form is approved by the Michigan Insurance Bureau and said administrative decision is not overruled by judicial decree.

Your second question asks what protection an individual police officer has from the consequence of action taken by him during riot, civil commotion or mob action when he acts in the performance of his duties. First, it should be made clear that the comprehensive general liability insurance policies do not protect police officers except with regard to one minor exception. The persons insured under comprehensive general liability insurance policies in the case of municipalities include the municipality "and any executive officer, director or stockholder thereof while acting within the scope of his duties as such."

Definition (e), as contained in the referenced portion of the comprehensive general liability insurance policy, protects police officers as follows:

"(e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,

"(i) an employee of the named insured while operating any such equipment in the course of his employment, and * * * provided that no person or organization shall be an insured under this paragraph (e) with respect to:

"(1) bodily injury to any fellow employee of such person injured in the course of is employment, or

"(2) property damage to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii)."

Police officers and firemen were formerly protected under 1951 P.A. 59, as amended [C.L. 124.101 et seq.; M.S.A. 5.3376(1) et seq.] which was repealed by 1964 P.A. 170 (M.C.L.A. 691.1401 et seq.; M.S.A. 3.996(101) et seq.). Sections 1 and 2 of the repealed act 1951 P.A. 59 provided prior to its amendment to include firemen, as follows with regard to police officers:

"Sec. 1. In case an action is brought against a policeman of a political subdivision of this state for torts, wrongful acts or omissions while such policeman is engaged in the performance of his duties as a policeman, the political subdivision in whose behalf the policeman is

acting within the scope of his authority or in the course of his employment may indemnify such policeman for any judgment recovered against such policeman, or pay any judgment so recovered, except where the action results from the wilful misconduct of such policeman.

"Sec. 2. Any political subdivision of this state shall have the power to appear for, or on behalf of, or furnish legal counsel to any policeman against whom any such action is brought: Provided, That such political subdivision shall not be made a party to any such action: * * *"

The above sections have been replaced by Sections 8 and 9 of 1964 P.A. 170, effective July 1, 1965. Those sections read as follows:

"Sec. 8. Whenever any claim is made or any civil action is commenced against any officer or employee of any governmental agency for injuries to persons or property caused by negligence of the officer or employee while in the course of his employment and while acting within the scope of his authority, the governmental agency is authorized, but not required, to pay for or engage or furnish services of an attorney to advise the officer or employee as to the claim and to appear for and represent the officer or employee in the action and the governmental agency may compromise, settle and pay such claim before or after the commencement of any civil action. Whenever any judgment for damages is awarded against any officer or employee of any governmental agency as a result of any civil action for personal injuries or property damage caused by the officer or employee while in the course of his employment and while acting within the scope of his authority, the governmental agency is authorized, but not required, to indemnify the officer or employee or pay, settle, or compromise the judgment. Nothing in this section shall be deemed to impose any liability on any governmental agency.

"Sec. 9. The purchase of liability insurance to indemnify and protect governmental agencies against loss or to protect governmental agencies and some or all of its agents, officers, and employees against loss on account of any judgment secured against it, or them, arising out of any claim for personal injury or property damage caused by such governmental agency, its officers, or employees, is authorized, and all governmental agencies are authorized to pay premiums for the insurance out of current funds. The existence of any policy of insurance indemnifying any governmental agency against liability for damages is not a waiver of any defense otherwise available to the governmental agency in the defense of a claim."

Under Michigan law as it now exists, police officers may be represented by counsel furnished by the city, and the city may compromise, settle or pay the claim or judgment against the police officer. Section 9 quoted above permits a city to purchase liability insurance which would protect both itself and the police officers or other employees. This language would permit cities to remove the mandatory endorsements with regard to riots and the suppression thereof, and in addition permit cities to contract to cover all of the liability arising out of claims for personal injury or property damage caused by police officers. Thus, the cities are authorized to purchase the type of insurance you describe as desirable. The insurance companies doing casualty

insurance in this state are authorized, upon approval of the Insurance Commissioner, to provide said coverage by endorsement if a standard form is not adopted.

Your third question must be answered that whether the city and the police officer will be denied the protection such insurance coverage is designed to provide will depend entirely upon the terms of the policy of insurance issued by the company to the city. If coverage is obtained, as is authorized by Section 9 of 1964 P.A. 170 and the company issues an endorsement to its general comprehensive liability policy granting such coverage, then such protection will not be denied. If the insurance contract does not provide for such protection, there is no law of this state requiring an insurance company to protect the city or the police officer against risks which are not specified.

In conclusion, the questions which you have raised are primarily a matter of contract. Cities have the authority under Section 9 of 1964 P.A. 170 to purchase appropriate liability insurance which would protect both the city and the police officers. The Insurance Commissioner can authorize insurance companies to issue liability policies which incorporate by endorsement coverage protecting the city and police officers. Whether cities purchase such coverage is purely a voluntary action on the part of the city. Such endorsements are not required by law to be made a part of the liability policy issued to a city. If an insurance company refuses to issue such an endorsement, then the city must seek another company willing to issue such an endorsement.

If you wish such endorsements to be made mandatory in all policies issued by insurance companies to cities, then legislation to this effect will have to be enacted. Such legislation could not affect existing insurance contracts due to the constitutional prohibition set forth in Article I, Section 10, of the Michigan and United States Constitutions.

FRANK J. KELLEY,
Attorney General.
