INSURANCE: The "Safe Driver's Reward" which involves a return of 15% of premium by casualty companies to policy holders in the event no claims are reported is a rate making device only and, therefore, proper.

November 4, 1939

11-9 FILED 55

Hon. Ray B. Lucas
Superintendent of Insurance
Jefferson City, Missouri

Dear Sir:

We have received your letter of October 17, 1939, which reads as follows:

> "Certain stock companies are writing insurance policies to automobile owners providing for a return of about fifteen per cent of the premium at the end of the year in the event the policy-owner does not have a claim under his policy. This is known as a Safe Driver's Reward, and the question has been raised with us that probably a stock company cannot write a policy which provides for a return of a portion of the premium at the end of the year. This question has been raised in view of the opinion furnished to us by Assistant Attorney General Hoffman, dated August 14, 1936, and the further opinion by Assistant Attorney General Wasserman, dated January 5, 1938.
>
> "We would like for your office to advise us whether or not, in your opinion, these stock companies can legally write such a policy in Missouri."

As we understand the situation, the stock insurance companies you have in mind are incorporated and are engaged in the writing of casualty insurance under the terms of Article 6, Chapter 37, R.S. Missouri, 1929; that such companies have put in force a plan whereby 15% of the total premium paid for automobile casualty insurance is returned to the policy holder at the end of the policy year in the event the insured does not have a claim under the policy within that period; that this plan is known as the "Safe Driver's Reward".

We have been unable to find any statute which appears to deal, either directly or indirectly, with automobile casualty rates. The Legislature has never said that automobile casualty insurance rates are to be regulated in any way. Full competition, therefore, appears to be sanctioned in this particular field of insurance rates and the companies engaged in such business apparently are permitted to establish their own rates.

In the case of Aetna Casualty and Surety Company v. Lawson, 166 S.E. 811 (S. Ct. of App. of W. Va.), the contention was made that since indemnity insurance companies were subject to the same "examination and supervision" by the Insurance Commissioner as were fire insurers that the Insurance Commissioner, therefore, had the authority to regulate rates of indemnity companies. The court, in holding that the Commissioner's duties with respect to rates went no further than fire insurance rates and did not include the supervision of rates on indemnity insurance because the Legislature had not so provided, said at l.c. 812:

> "As long as competition is sanctioned in any business, those engaging therein are permitted to establish their own rates. And when, in the opinion of the Legislature, regulation thereof becomes necessary, such businesses are by legislative enactment placed under designated regulatory bodies. The fact that fire insurance has been subjected to such regulation does not show legislative intent to regulate indemnity companies."

If and when the Legislature determines that regulation of automobile casualty rates are necessary, then, by statute, the matter of rates will be placed under the supervision and direction of a designated regulatory body as has been done in this state in connection with fire insurance rates. However, until that is done, neither the Superintendent of Insurance nor any other person or department has any regulatory powers over automobile casualty rates. Therefore, if the return of 15% of the premium at the end of the year to the policy holder as a reward for not having a claim under the policy involves only a question of rates, and we believe that it does involve only a rating question, then the plan would appear to be permissible.

If the plan you have outlined is something other than a rating plan only, it would be necessary to say that the policy holders were being permitted to participate in the surplus earnings of the company. In other words, stock casualty companies would, in that event, be issuing participating contracts of insurance to those who might emerge at the end of a year with no losses. However, we do not believe such a plan can be called a participating contract.

A participating policy is thus described in Cooley's Briefs on Insurance, Vol. 1, 2nd Ed., page 164:

> "A common form of life policy is that known as a 'participating policy', by virtue of the provisions of which the insured is entitled to share in the surplus earnings of the company in proportion to the premiums paid on the amount of his policy. This share in the surplus may be payable to him, at the option of the company, at a certain fixed period or as dividends. In the absence of a statutory provision, the time of distribution of a surplus to policy holders depends on the discretion of the directors of the company, except so far as it may be determined by the charter of the company or valid by-laws."

Again, on page 783, Cooley says:

> "A participating policy is one in which the insured shares in the profits arising from the premiums paid by himself and all others belonging to his class."

In other words, a participating policy is one where the policy holders share in the "profits" or "surplus earnings" of the company. If there should be no profits or surplus earnings, then there could be no dividends paid. Obviously, it would be impossible to ascertain at the beginning of a period the exact amount of profits or surplus earnings the company might realize at the end of such period. The surplus earnings might be large - in which event the participation could be correspondingly large. Again, such earnings might be very small or the business of the period might have sustained a loss. In any event, such dividends are ordinarily paid at the option of the company and at such times and in such amounts as the company might determine.

In the plan you outline, 15% of the premium is returned under certain conditions whether the company has realized a profit or not. The company has agreed to do this by contract. The policy holder is entitled to receive the 15% whether the company or its board of directors has declared a dividend out of surplus earnings or not. We think it is clear that the contracts containing the plan you have outlined are not participating contracts of insurance, but merely constitute a method of ascertaining the rate on a certain class of risks. Since it cannot be called a participation or a dividend plan whereby the policy holder shares in the "profits" or "surplus earnings" of the company, it must be only a rate system and, therefore, proper under existing laws.

CONCLUSION.

It is our conclusion that the "Safe Driver's Reward" plan, whereby 15% of the premium is returned to the policy holder at the end of the policy period by certain stock casualty companies in the event no claims are submitted under the policy contract, is a rate making device only, and since there is no control over automobile casualty rates in this state, there can be no objection to the plan you have outlined.

Respectfully submitted,

J.F. ALLEBACH
Assistant Attorney General

APPROVED By:

W.J. BURKE
(Acting) Attorney General

JFA:VAC