1950 O. A. G.

OFFICIAL OPINION NO. 3

February 3, 1950.

Mr. Frank J. Viehmann,
Commissioner of Insurance,
The Department of Insurance,
240 State House,
Indianapolis, Indiana.

Dear Sir:

We have your letter under date of January 4, 1950, requesting an official opinion of the following:

"May we respectfully request an opinion as to the extent of the legal authority conferred by Chapter 162, Section 259 of the Retaliatory Law approved March 8, 1935 as amended by Chapter 288 of the Acts of 1937?

"This Department for some time has had a controversy with the Pacific Mutual Life Insurance Company, a California corporation, and the Planet Insurance Company, a Michigan corporation, wherein both states have required Indiana companies to report the amount of premiums collected in their respective states on their respective forms and on the Indiana State tax form and pay tax on the one that brought the greater return before this State retaliated against either of the states.

"It appears impossible to arrive at any definite settlement of this question until it has been passed upon by your good office as to the legality of the position taken by this Department, in requiring companies of other states who retaliate against Indiana companies to submit both forms to this Department and pay tax on the one that brings the greater return. We, therefore, are submitting correspondence and papers in connection with this matter for your consideration and shall appreciate an opinion as to whether or not this Department should exact the taxes under Retaliatory position as set out in said correspondence."

So much of Section 259, Chapter 162 of the Acts of 1935, as amended by Section 5, Chapter 288 of the Acts of 1937 and as the same is applicable to your question is as follows:
"* * * When, by the laws of any other state, any
taxes, fines, penalties, licenses, fees, deposits of money
or securities, or other obligations or prohibitions are
imposed upon insurance companies of this or other
states, or their agents, greater than are required by
laws of this state, then the same obligations and pro-
hibitions, of whatever kind, shall, in like manner for
like purposes, be imposed upon all insurance companies
of such states and their agents. All insurance com-
panies of other nations, under this section, shall be
held as of the state where they have elected to make
their deposit and establish their principal agency in the
United States."

The primary rule in all statutory exposition and interpre-
tation is to explore and, if possible, discover the legislative
intention in the enactment of the statute. With this as our
guide, we searched Indiana cases touching upon the subject of
retaliation, but none are pertinent to your question in that
your interrogation has to do with the submission of the home
and foreign state forms.

In State ex rel. v. Continental Insurance Company, 67
Ind. App. 536, the Court said:

"* * * the enactment of the retaliatory statute was
not prompted by a tender solicitude for the public
treasury, but rather by the desire to secure for the fire
insurance companies of Indiana even-handed treatment
by the legislatures of other states. This end it seeks to
attain through the lex talionis. The retaliatory statute
plainly demands 'an eye for an eye, and a tooth for a
tooth.'"

The Court further stated the statute in question is not
primarily a revenue measure, but a retaliatory statute, and
being penal in its nature, and involving the comity of states,
must be strictly construed and executed with care".

State ex rel. vs. Continental Insurance Co.
67 Ind. App. 536;
In view of the court's application of "an eye for an eye and a tooth for a tooth" we are of the opinion that states requiring Indiana companies to file two separate and distinct forms and to pay tax on the one which is greater may in a like manner have their domiciled companies retaliated against by Indiana.

OFFICIAL OPINION NO. 4

February 6, 1950.

Mr. Walter Rice,
Alcoholic Beverage Commission,
201 Illinois Building,
Indianapolis, Indiana.

Dear Sir:

I have your request for construction of a part of Section 4 of Chapter 148 of the Acts of 1947, (Burns' Supp. 12-444). The part of the Section to which your letter is directed reads as follows:

“For the purpose of this section the term 'residential district' is hereby defined to mean and include an area composed of all territory within a radius of five hundred feet of the premises described in the application being considered for a permit and in which area seventy-five per cent or more of the territory is used for residential purposes as opposed to commercial, business or manufacturing purposes.” (our emphasis).

It is the prime purpose of any statutory interpretation to ascertain the intent of the legislature and once determined to give full effect to such intention.

State ex rel. Davenport v. International Harvester Co., 216 Ind. 463;
Zoercher v. Indpls. Union Rwy. Co., 211 Ind. 703;
State ex rel. School City of South Bend, 211 Ind. 267.

In order to arrive at the intention of the legislature, the act as a whole and all the parts thereof must be considered and