OFFICIAL OPINION NO. 72

July 27, 1945.

Hon. John D. Cramer,
Chief Deputy Insurance Commissioner,
Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of recent date in which you state that the Inter-Insurance Exchange of the Chicago Motor Club a reciprocal organization, is protesting payment of the fire marshal tax imposed by law. In your letter you state that this association is organized and operates as a reciprocal under the Enabling Act of 1919, page 503, of the Acts of the General Assembly for the year 1919.

In your letter you also enclose a letter from this association in which they state that they are organized and operate to write automobile insurance, the class of coverage described in paragraph (f) of Class 2 of the classifications of insurance enumerated in Section 59 of Chapter 162 of the Acts of 1935 (Sec. 39-3501, Burns' I. S. A.) In your letter you are apparently asking what position you should take on this matter.

Section 18 of Chapter 192 of the Acts of 1913, as last amended by Section 1 of Chapter 286 of the Acts of 1937, the same being Section 20-818 of Burns' 1933 I. S. A. (Pocket Supp.) provides as follows:

> "All fire insurance companies duly licensed to transact business in the State of Indiana shall pay into the state treasury on or before March 1 and September 1 of each year, an amount equal to three-fourths of one per cent (¾%) of the gross premiums of each company, received on fire risks written in the state, after deducting therefrom return premiums and considerations received from reinsurance, as reported by them to the auditor of the State of Indiana for the payment of premium taxes as now provided by law; said semi-annual payment by such companies shall be in addition to all taxes and license fees now required by existing law or laws to be paid by fire insurance companies doing business in Indiana, and which fund so paid in

> and created shall be known as the Fire Marshal Fund. (Acts 1913, ch. 192, Sec. 18, p. 556; 1917, ch. 135, Sec. 5, p. 429; 1927, ch. 208, Sec. 1, p. 592; 1937, ch. 286, Sec. 1, p. 1314.)"

Also, Section 2 of Chapter 286 of the Acts of 1937, the same being 20-818a of Burns' 1933 I. S. A. provides as follows:

> "All money accruing to the fire marshal fund by virtue of provisions of this act and which is in excess of the amount which would have accrued under the provisions of chapter 208 of the Acts of the General Assembly of 1927 and if this act had not been passed, is hereby appropriated to the state fire marshal and shall be expended for the purpose of defraying the expenses incurred in the enforcement and administration of this act and of chapter 192 of the Acts of the General Assembly of 1913 and of the several acts amendatory thereof and supplemental thereto, and shall be allocated for personal service, other operating expenses and capital outlay, by the budget committee, as nearly as practicable in the ratio that the personal service appropriation, other operating expense appropriation and capital outlay appropriation made by the Budget Act of 1937, bear to each other. (Acts 1937, ch. 286, Sec. 2, p. 1314.)"

Section 1 of Chapter 102 of the Acts of 1919, the same being Section 39-2801 of Burns' 1940 Repl., which deals with the regulation of reciprocal insurance companies, provides as follows:

> "Individuals, partnerships and corporations of this state, hereby designated 'subscribers,' are hereby authorized to exchange reciprocal or inter-insurance contracts with each other or with individuals, partnerships and corporations or other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the law *relating to fire insurance* and all classes of automobile insurance, and any other kind of insurance included with fire insurance in one (1) classification." (Our emphasis.)

Section 59 of Chapter 162 of the Acts of 1935, the same being Section 39-3501 of Burns' 1940 Repl., Class 1, (f), which contains the types of insurance claimed to be written by the protestant, provides as follows:

> "(f) To insure against any loss, expense and/or liability resulting from the ownership, maintenance, use and/or operation of any automobile or other motor vehicle, *including complete line coverage on automobiles or other motor vehicles;*" (Our emphasis.)

From your letter it appears that the protestant, Inter-Insurance Exchange of the Chicago Motor Club, is claiming that it is not a fire insurance company within the meaning of that term as used in the first statute quoted, imposing the tax in question. From the provisions of that statute it is obvious that it applies to *all* fire insurance companies duly licensed to transact business in the state. From the provisions of the statute regulating reciprocal insurance companies, under which you state the protestant was organized, it is clear that by its express words it relates to fire insurance and all classes of automobile insurance, and any other kind of insurance included with fire insurance in one classification.

Also, under Clause (f) of Class 1 of the 1935 Insurance Act above quoted, which contains the type of insurance which protestant claims it is writing, it provides for complete line coverage on automobiles or other motor vehicles. Under such language, of course, the risk of fire insurance would be included.

Therefore, under both the reciprocal insurance law and under the 1935 Insurance Act, protestant is expressly authorized to write fire insurance within the State of Indiana. The tax in question is imposed upon all fire insurance companies.

It has heretofore been held by the Attorney General of the State of Indiana that the tax in question, which is imposed upon all fire insurance companies for the purpose of enabling the fire marshal to carry out his duties, is constitutional and applies to both foreign and domestic fire insurance companies.

1937 Ind. O. A. G., p. 79;
1939 Ind. O. A. G., p. 326.

A similar Act was held constitutional in the case of Rhinehart v. State (1908), 121 Tenn. 420, 117 S. W. 508.

Moreover, it has been definitely held by the Attorney General of the State of Indiana that *all* companies and organizations writing fire premiums in Indiana are subject to the fire marshal tax. (1939 Ind. O. A. G., p. 175.) In that opinion the Attorney General said as follows:

> "Your question, according to your letter, is whether casualty companies or organizations writing any form of fire premiums in the State are obliged to pay the tax required by the foregoing section.
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> "While casualty companies or other organizations writing fire premiums are not, strictly speaking, fire companies, it is my opinion that when they do write fire risks as permitted under the Indiana insurance laws, they are to be understood as included for the purposes of the section under consideration as fire companies and should pay the tax.
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> "Fire companies cover many forms of insurance risks other than fire, such as lightning, earthquake, tornado, hail, and many others, not only on buildings but also upon every description of personal property. It is not reasonable to believe that the legislature intended the tax in question to be collected alone of actual fire companies when a large part of their business did not involve fire, and on the other hand permit casualty companies and other organizations writing fire risks to go untaxed.
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> "The section of the statute under consideration does not use the term fire companies in a necessarily exclusive sense. The section does not define fire companies and its apparent purpose is to require the tax as related to fire risks, the term fire companies being a loose, but not improper, designation of such companies and organizations as write such fire risks.
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> "It is therefore my opinion that said section 20-818 applies to all companies and organizations writing fire premiums in Indiana."

Based upon facts set forth in your letter and the foregoing statutes and authorities it is my opinion that the Inter-Insur-

ance Exchange of the Chicago Motor Club is subject to the payment of the fire marshal tax.

OFFICIAL OPINION NO. 73

July 27, 1945.

Colonel Austin R. Killian,
Superintendent, Indiana State Police,
State House,
Indianapolis, Indiana.

Dear Colonel:

I wish to acknowledge your request for an official opinion upon the following agreed facts:

An employee of the Indiana State Police Department resigned in 1944 prior to reaching the normal retirement age of fifty-five years. In May of 1944 the Pension Advisory Board forwarded this office an application for a lump sum pension payment which did not in fact afford such officer the right of election of lump sum settlement or an annuity provided by paragraph 9, Section 8 of the Indiana State Police Department Pension Trust Agreement. As a matter of fact at that time and for some period of time thereafter the State Police Pension Board was not aware of the optional retirement benefits afforded by said Trust Agreement, and the application for such lump sum payment was given said retired officer under the admitted departmental misunderstanding that such officer was only entitled to lump sum settlement, such facts being communicated to such police officer. Under these facts the applicant mailed back the application for lump sum settlement and on May 27, 1944, was mailed a check in lump sum settlement in the sum of $773.06.

Subsequently, early in 1945 the Pension Board and the officers of the Indiana State Police Department became aware of the provisions of said Trust Agreement authorizing such optional pension adjustment and granted an annuity to one of the retiring officers. Upon this fact becoming known to the previously retired officer he presented to the Pension Board, by his attorney, a request that they receive the return of the