effect of Chapter 199 of the Acts of 1941 is not applicable. If such is the case, such special and particular cases must be referred to us for interpretation.

INSURANCE DEPARTMENT: In re Chapter 167 of the Indiana Acts of 1941—whether a rate less than the maximum fixed by the department may be used uniformly by the company—Must the company’s expense ratio as filed with the commission be used on every risk by the company? Is the department required to approve all deviations from the experience rates as provided by the company? Do the minimum premiums as established by the bureau apply so as to permit the department to give minimum rates for all classifications as well as maximum rates?

December 31, 1941.

Mr. Frank J. Viehmann,
Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Mr. Viehmann:

I have before me your request that an official opinion issue in response to your inquiry relating to the interpretation of Chapter 167 of the Indiana Acts of 1941 (p. 515). Since your inquiry presents five distinct questions these each will be stated and the response given in the order in which they appear in your letter.

1.

"Does the last sentence of Section 1 of Chapter 167, Acts of 1941, mean that when a rate less than the maximum is used, such rate must be used for all risks in the same class by that company—or may they be used for any individual risk?"

Section 1 of Chapter 167 of the Indiana Acts of 1941 (pp. 515-516) reads:

"The department shall approve a maximum adequate premium rate for each classification under which work-
men's compensation insurance is written. No person, firm, company, or corporation, lawfully writing workmen's compensation insurance, wholly or in part, shall use a premium rate greater than that approved by the department; Provided, however, That the department shall, upon a showing to the department that an emergency exists and that on account of usual conditions, the rate approved by it for any classification is shown to be inadequate for safe and sound underwriting for any one risk, establish a rate for such risk in excess of the rate previously approved by the department for such classification. Nothing in this act shall be construed to prohibit any company from charging a premium rate less than the maximum premium rate approved by the department for any classification.”

8 Burns' Indiana Statutes (June, 1941, Cumul. Supplmt.) 39-3018.

Significantly the 1941 amendment inserted the word “maximum” in lieu of the word “minimum” utilized in Section 13 of Chapter 323 of the Indiana Acts of 1935, and added the proviso. I therefore must respond to your first question in the negative. The essence of the amending act of 1941 is to remove restrictions resulting in lower rates to the insured. The words “for any classification” in the final sentence of Section 1 are descriptive and define the words “maximum premium rate approved by the department.” Thus properly construed the sentence plainly commands that nothing contained in the act shall be interpreted to prohibit a company from charging a premium rate less than the maximum rate approved by the department—and there is no statutory restriction upon the companies requiring the same premium rate to be granted all similarly situated.

2.

“Does Section 2—last sentence—mean that each company shall file its expense ratio with the Department individually, and when so filed must that expense ratio be used on every risk written by that company?”

Section 2 of Chapter 167 of the Indiana Acts of 1941 (at p. 516) reads:

“The department shall establish maximum limits of expense to be included in the rates. Every person, firm,
company, or corporation shall file with the department a schedule of the expense to be collected by it on business affecting the writing of workmen's compensation insurance in this state; such charge shall be approved by the department before it shall be effective."

8 Burns' Indiana Statutes (June, 1941, Cumul. Supplmt.) 39-3019.

Under this section it is mandatory that each company file with the insurance department a schedule of its expense. The department is to approve any charge made to cover expenses before the same becomes effective. But there is no requirement in the statute that the expense charge when so approved must be used on every risk written by the company. When the act is read in its entirety and contrasted with the sections amended, the legislative intent and design become clear; it was to permit companies to exercise the widest latitude in the matter of cutting rates below a maximum premium rate approved by the department. Many may question the wisdom of the legislation, but the intent is too obvious to permit of any other construction.

3.

"Does Section 3 mean that the Department is expected to approve deviations from the experience rates promulgated by the Bureau for individual risks?"

I must respond in the affirmative. Section 3 of Chapter 167 of the Indiana Acts of 1941 (at p. 516) reads:

"The department may on proper showing relating to any employer make an experience rate for such employer and may modify or revoke such rate as the facts may warrant. No such rate or modification thereof shall be effective until thirty (30) days after notice thereof to the rating bureau."

8 Burns' Indiana Statutes (June, 1941, Cumul. Supplmt.) 39-3024.

"Section 4 provides that under specified conditions a risk may be insured subject to the rate and classification established by the Bureau and the Department. Does this mean that the Department could exercise this right generally to all risks if it so desired?"
This right is not to be exercised generally, but only in such instances and at such times as "a reasonable doubt exists on the part of the department as to the proper classification or maximum premium rate for any risk."

8 Burns' Indiana Statutes (June, 1941, Cumul. Supplmt.) 39-3026.

5.

"Section 39-3009 of Chapter 30 provides that the Bureau shall establish minimum premiums. Does this mean that the principle of maximum rates does not apply to 'minimum premiums'? If so, does the law permit the department to fix minimum rates for all classifications as well as maximum rates?"

Reference is made to Section 4 of Chapter 323 of the Indiana Acts of 1935 (at p. 1543), which reads:

"The duty of such bureau shall be the establishment of minimum premiums to be charged for workmen's compensation in the State of Indiana."

8 Burns' Indiana Statutes (1940 Replacement) 39-3009.

The "premium rate" is not to be confused with the "minimum premium." The latter is an arbitrary amount which must be paid regardless of the amount of the risk or other conditions. A "minimum premium" in workmen's compensation insurance is the lowest amount for which a policy may be written for any period not exceeding one year. In this respect it is comparable with the "minimum charge" or the "demand charge" that so frequently appears on utility bills. It is quite separate and distinct from the matter of "rates." It is, of course, true that the current practice is to relate the minimum premium to the rates for a given classification \((15 \times \text{the rate} + \$10)\) but there is no reason why the "minimum premium" should not be based on some arbitrary amount. It would appear patent that inasmuch as Section 30-3009 was not amended, that the bureau shall establish minimum premiums.