

As heretofore stated, your question is answered in the negative.

INSURANCE: Life insurance broker not authorized by law.

August 28, 1940.

Honorable Frank J. Viehmann,

Insurance Commissioner, Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

You request an official opinion by your letter of August 13th which reads as follows:

“This Department respectfully requests an opinion from you in regard to the contents of the enclosed letter.

“This letter requests a reply to the question as to whether or not this Department will issue to an Indiana corporation a brokers license which will permit said corporation to act as a life insurance broker.”

The enclosed letter to which you refer, written you by a firm of attorneys of this state, is an exhaustive, carefully prepared, six page analysis of the question involved. I quote that part of the letter which furnishes a summary of their opinion:

“1. The general definition of an insurance broker allows the broker to engage in all kinds of insurance business, which necessarily includes life insurance, (39-3203-j).

“2. The chapter of the insurance law, (Chapter 45) providing for the licensing of an insurance broker makes no exception of life insurance, and so we must conclude that life insurance was intended to be included within the scope of the broker’s license. The only contrary statement in the entire insurance law is contained in the caption to this chapter and a section of the insurance law, (Section 39-5032) expressly

provides that this caption is to be ignored in interpreting the insurance law.

"3. The only provision of the insurance law which prohibits a corporation from acting as a life insurance representative merely prohibits a corporation from acting as an *agent*, and a section of the chapter in which this prohibition appears, (Section 39-4601) expressly defines the word "agent" as meaning the *representative of the insurance company*. Since a broker is in fact as well as by virtue of an express provision of the insurance law, (Section 39-4501-c), the representative of the insurance purchaser rather than the insurance company, a broker is not subject to this prohibition. Thus, the very section which imposes the restriction upon corporations tacitly permits a corporation to engage in the life insurance business as a broker.

"An Indiana corporation authorized by its charter to engage in the life insurance business is therefore entitled to receive a broker's license from the department of insurance and thereafter to engage in the business of life insurance as a broker."

The question presented, whether the Department of Insurance is authorized to issue a license to a corporation to act as a life insurance broker, largely involves an interpretation of the various definitions as found in the Indiana Insurance Law of "agent", "broker" and "solicitor."

Definitions of these three terms are found in Section 3 of the Indiana Insurance Law of 1935, subdivisions (i), (j) and (k), respectively (being Section 39-3203, Burns' Statutes, 1933, 1940 Replacement).

The introductory sentence, namely, "As used in this act, and unless a different meaning appears from the context:", of Section 3, is followed by the various subdivision definitions of the section.

It is obvious that the definitions of Section 3 are to stand unmodified unless in some respect altered by the context of the law.

It is to be noted that a distinct modification of meaning and application of the term "agent" is provided in Section 217 of the act (Section 39-4601, Burns' Statutes, 1940 Replacement)

as pertaining to life insurance agents. This difference of meaning amounts to an exception to the general definition of "agent" as stated in the earlier Section 3. Incidentally, it is to be noted that this section provides that a life insurance agent must be a natural person, not a corporation.

In view of this definite exception, as well as when examining the act as a whole, it would seem clear that the definitions of the three terms, agent, broker and solicitor in Section 3 have reference to all kinds of insurance except life insurance. There can be no question but that the term "solicitor" has no application to life insurance but does have application to all other kinds of insurance; and there is no indication in any part of the law that any exception is made with reference to the term "broker" such as definitely to provide for a "life insurance broker."

It is to be noted that in addition to the definition of "broker" in Section 3, there is further definition of the term given by Section 209 (c) (Section 39-4501(c), Burns' Statutes, 1940 Replacement) being Part 4 of Article I of the law. This article is captioned "Insurance Agents Other Than Life Insurance Agents." Irrespective of the caption, and even if such caption is disregarded, this entire article obviously has reference alone to agents other than life insurance agents.

The fact that the definition of "broker" in Section 3 is again repeated, and amplified, in such Article I (pertaining to agents other than life insurance agents) and does not reappear in Article II of Part 4 (relating to life insurance agents) tends to reemphasize the conclusion that there was no legislative intent, directly or indirectly, to provide for a life insurance broker.

The last three words, "other than life", seem unnecessarily to have been included as a part of the definition of solicitor. A probable purpose for the inclusion of the clause was to relieve any misunderstanding at this point in the act that a solicitor had any relation to a life insurance agent, which receives a different definition in a subsequent section of the law; and it is a logical conclusion to be drawn, when reading carefully the entire Section 3 (k), that neither an "agent" nor a "broker", as defined in Section 3 was to have any concern with life insurance. In any event, the use of this clause is not of much value in determining the question presented by your letter.

From careful examination of all sections and provisions of the law, and taking into account as well practices and customs followed in the insurance business and by the Department of Insurance of long standing which have never recognized the institution of "life insurance broker," it is my opinion that the law does not contemplate and does not authorize a "life insurance broker" either as a corporation or as a natural person.

PUBLIC INSTRUCTION: Teachers' contracts, whether same must be supported by prior appropriations.

Teachers' Contracts: Whether same must be supported by prior appropriations.

School: Whether teachers' contracts must be supported by prior appropriations.

September 10, 1940.

Hon. Floyd I. McMurray,
State Supt. of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that school budgets and appropriations are made on the basis of the calendar year, such budgets and appropriations being made sometime in September of each calendar year for the subsequent calendar year.

Under date of June 1, 1938, in a letter addressed to the State Examiner this Department held, basing its opinion upon the case of Mitcheltree School Township v. Baker, 53 Ind. App. 472, that:

"It is apparent from the above authorities that teachers employed by the township trustee can force payment of the minimum salary authorized by law regardless of the existence of an appropriation providing funds for such purpose."