INSURANCE, DEPARTMENT OF: "Safe Driver Reward Plan," whether such constitutes a rebate within purview of Insurance Code, section 178 (a) applicable only to fleet policies.

May 12, 1939.

Hon. George H. Newbauer, Insurance Commissioner,
Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of May 11, 1939, referring to the "Safe Driver Reward Plan" relative to premium rates for insurance upon automobiles which was tentatively approved by your department on April 1, 1938, pending a final decision of the question by the Attorney General.

The so-called Safe Driver Reward Plan is a plan whereby the regular established premium according to the rates fixed by the bureau is charged, it being provided, however, that if at the end of the year the automobile insured has not been in an accident causing property or public liability damage, the owner is to receive a fifteen per cent (15%) return of the premium previously paid. This return, according to the plan as I understand it, may be paid in cash or if the insured reinsurance for a subsequent year it may be used as a partial payment of the premium for the succeeding year.

This department by a letter dated January 27, 1938, disapproved the plan except as applied to what is called a "fleet policy." (See Opinions of the Attorney General for 1938, p. 52.) After some discussion the tentative approval of April 1, 1938, was given in order that the plan might be tried and also to enable a further study of its legality by the Attorney General having regard to the results of the plan upon test. You now ask for an official opinion as to the legality of the plan.

In my opinion the former official opinion of the Attorney General should stand. Section 178, subdivision (a) of the Indiana Insurance Law provides among other things that on or before July 1, 1935, every insurer authorized to effect insurance upon automobiles or other motor vehicles against loss or damage by theft, collision, personal injuries and property damage in the State of Indiana, shall file with the department
all schedules of rates used by it, including the classification of cities, towns, counties and townships in the State and all rules and regulations of the insurer pertaining to such schedules. If changes are to be made, the insurer is required to file the proposed changes with the department. It is then provided as follows:

“No such insurer shall make any deviation, or give or promise to give any discount or rebate from such schedule of rates, rules and regulations so established and filed with the department, except as hereinafter provided in this sub-section (s). Any such insurer shall be permitted to make deviations and percentage discounts from such regularly published schedule of rates, rules and regulations only for the purpose of making insurance under a fleet policy as hereinafter defined. Such deviations and/or percentage discounts made and allowed on such fleet policies shall be based on the underwriting experience of such fleet, and the insured, upon the hazard or hazards insured under such fleet policy. The term “fleet policy” as used in this Act shall mean any insurance risk of five or more automobiles of any kind, all owned by one assured and all under one direct operating management: Provided, That automobiles and/or other motor vehicles owned by employees may not be included or insured under the fleet policy of an employer under any circumstance.”

It seems to me that this language is clear. While the provision for the refund is provided in one of the rules filed with the department, it is none the less a rebate and discount paid or allowed to certain policy holders upon a classification which is in no way based upon the risk assumed at the time the policy was written but which is based upon a condition subsequent which may or may not be related to the type of operation of the automobile.

In my opinion such a rule is absolutely invalid. A rebate is none the less a rebate because it is agreed in advance that upon the occurrence of certain events,—it is agreed in advance to be paid. The plan is therefore disapproved.