INSURANCE, DEPARTMENT OF: Rates, authority of department in regard to automobile insurance.

May 15, 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, calling attention to the fact that there has been filed with the department by certain casualty insurance companies a proposed new rule, 13-A, enumerating certain proposed new rates for insurance on private passenger automobiles. You state that the proposed rule does not meet with your approval and that you propose in lieu thereof a rule of the department containing certain changes which are not important so far as the consideration of the question which you submit is concerned, the question being whether the department has the authority under chapter 162 of the Acts of 1935 to substitute a different plan involving the establishing of rates different from those proposed in the rule filed by the company representative.

The above question requires a consideration of sections 11, 14, 26 and 178, especially subdivision (s) of section 178 of the "Indiana Insurance Law," being chapter 162 of the Acts of 1935, entitled "An Act concerning insurance, and declaring an emergency." In approaching the discussion of the subject suggested by your question, it should be borne in mind that the business of insurance has long been held to be "affected with a public interest" or as it is put in some of the cases, "clothed with a public interest" and therefore subject to control by the State for the common good.

German Alliance Insurance Co. v. Lewis, 233 U. S. 382, at p. 413;

The above sections should, therefore, be considered and construed with reference to the above well-recognized principle. Your attention is first called to section 11 which requires every insurance company to which the Act is applicable to "conduct and transact its business in a safe and prudent man-
ner," requiring also that every such company "shall establish and maintain safe and sound methods for the conduct of such insurance company and its business and prudential affairs."


The question as to what constitutes upon the part of a company the transaction of its business in a safe and prudent manner is not, however, left to the company to determine absolutely. Section 14 of the Act expressly places that duty upon the Department of Insurance and provides that the department is authorized to make, promulgate, alter, amend, or repeal rules and regulations for a number of enumerated purposes, among which is the following:

"(c) Defining what is a safe or an unsafe manner and a safe or unsafe condition for conducting and transacting business by any insurance company to which this Act is applicable."


Moreover, section 26 among other things invests the department with not only the power but the duty to take legal steps when necessary to require companies to which the Act is applicable to conduct their business in a safe manner as provided by the rules of the department. This, of course, refers to valid rules of the department and such as are made under the provisions of section 14 already referred to.


The provision upon which reliance is placed by those who would deprive the department of certain of its authority, especially as related to casualty companies doing an automobile insurance business, is subdivision (s) of section 178 to which I next desire to call your attention. Section 178 (s) insofar as necessary for the consideration of your questions, provides as follows:

"(s) On or before July 1, 1935, every insurer authorized to effect insurance upon automobiles and/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, the classification of each city, town, county and township in Indiana together
with the basis or table rate that is used in each particular city, town, county or township, and all rules and regulations of such insurer pertaining to such schedules of rates so filed. Such schedules, rules and regulations shall be verified by the proper officers of such insurer and shall, after the date of such filing, be and constitute the regularly published rates, rules and regulations of such insurer. Any such insurer shall be permitted to make changes in its established and regularly published rates, rules and regulations and contracts and agreements upon filing such proposed changes in writing with the department, which changes so filed shall be and become effective as the regularly published rates, rules and regulations of such insurer, fifteen days after so filing with the department as herein provided.”

It is apparent from the reading of the entire section 178 that subsections (a) to (r) inclusive, insofar as insurance upon automobiles is concerned, are intended to relate to loss or damage by “fire and theft” only, while the last subsection, or subsection (s), is intended to relate to loss or damage by “theft, collision, personal injuries, and property damage”; in effect, two provisions, and the procedures involved, are embodied in the same section.

Although the details of procedure with relation to rates of schedules, rules, regulations, contracts or agreements of insurance companies or rating bureaus, is made more complete in said section 178 as pertain to “fire and theft” losses than is provided in subsection (s), it is my opinion that the legislature had no intention of giving to the department less control over the rates applicable to the one character of losses than over the other.

Rates are inseparably related to the question of safe or unsafe practices as applied to insurance companies, and it is incomprehensible that the department should be given the power and authority over the question of safe and unsafe practices and at the same time be denied the right to touch the subject of rates. I am of the opinion that such a result is not intended, and that sufficient authority is provided in the earlier sections of the Act setting up the authority of the department notwithstanding the lack of a definite procedure in section 178 (s). In the absence of complete procedure being set out in section 178 (s), it is my opinion that section 14 furnishes
ample power to the insurance department to supply and pro-
mulgate necessary and reasonable rules relating to rates in-
volving automobile insurance against losses by collision, per-
sonal injury and property damage.

It appears from section 178(s) that all rates that were
used by the class of insurers referred to therein on or before
July 1, 1935, became established rates upon being filed in
verified form with the department, and it will be noted that
the insurers were permitted to make changes in their estab-
lished and published rates to become effective fifteen days
after the filing of such changes with the department, thus giv-
ing the department fifteen days' notice of the contemplated
changes. But there is nothing in these provisions inconsistent
with the supervisory authority in the department through its
rules to change or modify these rates.

It is my opinion, therefore, that your department has author-
ity, under the provisions of paragraph (c), section 14, to pro-
mulgate a rule or rules defining what is a safe or unsafe
manner and a safe or unsafe condition for conducting and
transacting business by any insurance company to which the
Act is applicable; and that any reasonable rule fixing, within
the sound discretion of your department, limitations as to
rates based upon experiences as to safe or sound insurance
practices would be valid, whether applying to insurance upon
automobiles and other vehicles against loss or damage by fire
and theft, or applying to insurance upon automobiles and
other motor vehicles against loss or damage by theft, collision,
personal injuries and property damage, or as applied to both.

HIGHWAY COMMISSION, STATE: Pavement of streets be-
tween double rail tracks, whether duty of commission or
street railway company.

May 17, 1939.

Mr. T. A. Dicus, Chairman,
State Highway Commission,
State House,
Indianapolis, Indiana.

Dear Mr. Dicus:

Your letter of May 5, 1939, relative to the pavement of
a highway in a city where there is a double track street rail-