INSURANCE, DEPARTMENT OF: Fleet policies, where issuable for oil trucks and tank and chassis are separately owned.

June 2, 1939.

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

Dear Sir:

Your letter of inquiry of May 26th outlines the following state of facts:

That certain automobile insurers operating in Indiana are making a practice of insuring by "fleet policy" automobile trucks operated in the oil and gasoline distributing business where the chassis of the truck is owned by commissioned agents of the oil and gasoline distributing companies but where the tank bodies of the trucks are owned by the distributing companies and are leased to the commissioned agents.

Upon the foregoing facts you ask the question whether in my opinion such practice on the part of automobile insurers in so writing such fleet policies is contrary to the law as expressed in subsection (s) of section 178 of the Indiana Insurance Law, being chapter 162 of the Acts of the General Assembly of 1935.

The wording of this subsection, insofar as it relates to your question, reads as follows:

"The term 'fleet policy' as used in this Act shall mean an 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 will be noted that the foregoing phraseology is not only clear that a fleet policy is to be confined to automobiles owned by one assured and under one direct operating management, but to make more clear the purpose and meaning of the section a proviso is added to the effect that automobiles owned by employees are not to be included or insured under the fleet policy of an employer under any circumstance. (Our italics.)
According to the facts, the commissioned agents own the chassis, and lease of the companies the tank bodies. The leasing amounts to a certain relinquishment of possession and control by the companies of the bodies, whatever may be the terms of the lease, such as adds to the position of the agents as actual owners of the trucks. It is quite apparent that the trucks in question, according to the facts presented, are not in one owner and under one direct operating management.

In view of the definite terms of section 178 (s), it is my opinion that fleet policies issued under the circumstances stated in your letter are in violation of the terms and of the purpose and intent of such section and are therefore issued contrary to law.


June 7, 1939.

Mr. Kenneth M. Kunkel, Director,
Division of Fish and Game,
Conservation Department,
State House,
Indianapolis, Indiana.

Dear Mr. Kunkel:

I have your letter of June 3, 1939, asking for an official opinion relative to an island in Hoffman Lake, Kosciusko County. The question you asked is: "Has the United States Department of Interior the right and authority to sell islands in meandered lakes when it has sold and patented all of the abutting land?"

I am of the opinion that the fact that the United States Government has sold and patented all of the abutting land does not affect the legal status of an island, providing the island was formed prior to the admission of Indiana as a state.

An Act of Congress, 1850, granted to the State of Indiana all the swamp and overflowed lands within its boundaries but this did not include islands which was in existence prior to the admission of the state.

It appears from a communication from the Department of the Interior that the island in question was surveyed by the department in 1937, and found by the department to be public