

INSURANCE DEPARTMENT: Division of agent's commission—practice constituting rebates as illegal under Sec. 273 of Insurance Act of 1935; penalties for violation of Sec. 273 and licenses of finance company as agents, brokers or solicitors.

February 17, 1937.

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

Dear Sir:

Your letter requesting an official opinion asked several questions. The queries you submitted were predicated upon the following facts contained in your letter:

"It has recently come to the attention of the Department that certain individuals, partnerships, and corporations, holding insurance agents' licenses for other than life insurance, are writing the insurance on automobiles sold under conditional sales contracts and are crediting a part or all of the agency commission on such policies, either directly or indirectly through a non-licensed third party, to the finance company named as *co-insured* with the purchaser of the automobile under the policy or certificate of insurance.

"The questions before the Department as a result of such practices are as follows:

1. May an insurance agent divide his commissions with an individual who does not hold a license as agent, solicitor or broker?
2. Would such practices constitute the giving and acceptance of a rebate of premium as defined in section 273 of the Indiana Insurance Law of 1935?
3. In the event such practices do, in your opinion, constitute the giving and acceptance of a rebate, what steps should be taken by the Department to stop further violations and to punish those following such practices as may have come to the attention of the Department?

4. Also, if, in your opinion, such practices constitute rebating, would the condition be corrected as to future practices in the event the finance company were to qualify for and receive an agency license for other than life insurance?"

Section 273 of the Indiana Insurance Law, the same being the Acts of 1935, Section 273, at page 788 provides in part:

"(a) No company acting through its officers or members, attorney-in-fact, or by any other party, no officer of a company acting on his own behalf and no insurance agent, broker, or solicitor, *personally* or *by any other party*, shall offer, promise, allow, *give*, set-off or *pay directly* or *indirectly*, any rebate of or part of the premium payable on a policy, or any *agent's commission* thereon, or earnings, profits, dividends or other benefits founded, arising, accruing, or to accrue thereon or therefrom, . . . or any other valuable consideration of inducement, to or for insurance on any risk in this State, now or hereafter to be written, . . . or offer, promise, give option, sell or purchase any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or *other thing of value* whatsoever as inducement to *insurance* or *in connection therewith*, or any renewal thereof, which is not specified in the policy. . . ."

Since your question numbered one asks about a division of commission, the thing involved is in connection with insurance. The Act of 1935, *supra*, provides that those enumerated, among whom are agents, shall not give a thing of value in connection with insurance unless specified in the policy. Since the commission is a thing of value and the divided amount is given by one named in the act in connection with insurance, it is my opinion, unless the policy specifies to the contrary, that the agent cannot divide his commission in the manner you ask about.

Furthermore, paragraph (b) of section 273, *supra*, makes it illegal for an insured person or party or applicant to accept, directly or indirectly, any part of an agent's commissions other than such as are specified in the policy.

Assuming the policy makes no provision for the practice of which you speak, and since you mention that the finance com-

pany is a co-insured, the acceptance by the finance company of a division of the commission is likewise illegal.

Your question numbered two asks whether these practices which you set out constitute the giving and acceptance of a rebate of premium as defined in Section 273, *supra*.

The word "rebate" is defined in Webster's New International Dictionary, Second Edition, when used in connection with insurance, as meaning "a portion of the premium returned, directly or indirectly, to the policyholder by an agent or broker (from commissions received) either as an inducement to purchase insurance or to gain a competitive advantage over another agent or broker in selling insurance."

Since the finance company is, as you say, named as co-insured with the purchaser of the car, it is, in my opinion, a policyholder within the definition set out in section 3 (o) of the Indiana Insurance Law, *supra*.

While it is true that "rebate" means return, and unless something is once possessed and the possession somehow lost, it cannot be returned, nevertheless it would seem that the intention of the Legislature was that the word "rebate" not be confined to a narrow meaning. The purpose of section 273, *supra*, was to prevent a competitive advantage arising in favor of certain insurers. This could not be accomplished if "rebate" were interpreted to mean giving only to him who had originally paid. This is true because the finance company can, in its buying of conditional sales contracts from dealers, insist on insurance with those agencies who pay them a portion of the commissions on such insurance, thus giving rise to a competitive advantage in favor of those insurance companies whose agents divide their commissions with a finance company.

The finance company, if not licensed to do an insurance business in this State as a broker, an agent, or a solicitor, could render no service in connection with the policy that would, under the Insurance Law of Indiana, *supra*, legally entitle them to receive a commission or a portion of a commission from an agent or agents who sold the insurance.

The answer, therefore, to your second question, in my opinion, should be in the affirmative.

Your question numbered three inquires as to what the department can do to stop such practices and punish those who are following them.

Paragraph (c) of section 273, *supra*, provides that "any company or any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each and every violation, or to be imprisoned in the jail of the county in which the offense is committed for a period of not more than six months, or both."

Such practices as you define in your letter are misdemeanors as described in the quoted paragraph above, and the offenders may be punished in the manner provided by the statute. The action against the offenders can be started by an affidavit made by any competent person or by a grand jury indictment. Both he who gives and he who receives is liable under this statute.

You have another remedy open to you against this type of agent. Section 213 of the Indiana Insurance Law, *supra*, provides for revocation of any license for several enumerated causes, among them being when the "insurable interests of the public are not properly served under said license." Of course, the procedure prescribed in said section 213 would have to be adhered to.

Your fourth question asks whether the condition referred to would be corrected as to future practices in the event the finance company were to qualify for and receive an agency license for other than life insurance. The statute makes no specific provision, which I have been able to find, against obtaining such a license by the finance company.

Section 211 of the Indiana Insurance Law, *supra*, sets up the qualifications which must be met by the applicant to qualify for a license. If these are satisfied by the finance company, I see no reason why they would not be entitled to a license as an agency for other than life insurance.

Section 273, *supra*, portions of which were set out above, would, in my opinion, not prohibit such finance company from securing a license. This section is designed to prevent those who render no service in the solicitation of the business or the writing of the risk, from participating in the commissions in order that all companies be on a more or less equal basis competitively.

The answer to your fourth question, therefore, is that, as to the practice of rebating, if the finance company were a licensed agency and writing the insurance itself, the reasons for the rebate would disappear.