OFFICIAL OPINION NO. 57

November 21, 1963

Mr. Harry E. McClain
Insurance Commissioner
Department of Insurance
509 State Office Building
Indianapolis, Indiana

Dear Mr. McClain:

This is in response to your request for an Official Opinion on the following question:

> "May we have your official opinion as to whether Section A(2) of Burns' Annotated Statute 39-4261 permits franchise accident and health insurance policies to be issued by insurers doing business in Indiana to employees of members of associations participating in a franchise accident and sickness insurance program?"

Your question pertains to the Acts of 1953, Ch. 15, Sec. 169.11, as found in Burns' (1963 Supp.), Section 39-4261, which reads as follows:

> "No policy of accident and sickness insurance on a franchise plan shall be delivered or issued for delivery to any person in this state unless it conforms to the definitions, limitations, requirements and standards in this section prescribed:
>
> "(A) Qualified groups.
>
> "(1) Five [5] or more employees of any employer, inclusive of any governmental division, department or agency.
>
> "(2) Ten [10] or more members of any trade, occupational or professional association or of a labor union, or of any other association or group which has had an active existence for at least 2 years and which has a constitution or by-laws and was formed in good faith for purposes other than that of obtaining insurance.
>
> "(3) Members of the family and dependents of persons eligible under (1) or (2) above may be included in the group with such eligible persons.

"(B) Nature of insurance coverage. The insurance policies issued to members of a qualified group shall be written on identical individual policy form or forms, varying only as to amounts and kinds of coverage applied for by such persons, and such policy form or forms shall otherwise fulfill the requirements of sections 169.2 to 169.9, inclusive, of this act. The premiums for such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of such employer or association.

"(C) Rates, benefits, underwriting procedures. Premium rates, benefits and underwriting procedures relating to such individual policies may differ from those relating to comparable individual policies issued singly, but as between comparable groups such rates, benefits and procedures shall be nondiscriminatory."

As used in this statute, the words "on a franchise plan" would indicate they had a technical meaning in the insurance industry. However, investigation revealed that this is not true and that it is merely a form of accident and sickness insurance written within the limitations prescribed in the statute using the phrase. In other jurisdictions, comparable statutes state that "accident and sickness insurance on a franchise plan is hereby declared to be that form of accident and sickness insurance issued to" and then proceeds to set forth categories similar to that contained in the above section.

See: Purdon's Pa. St., Sec. 40-756.4.

It is actually a method of selling rather than a type of a policy.

This method of defining "franchise plan" is compatible with the Acts of 1953, Ch. 15, Sec. 169.1, as found in Burns' (1963 Supp.), Section 39-4251, which refers to accident and sickness policies and reads in part as follows:

"* * * Such policies may be on the individual basis under sections 169.1 to 169.9, inclusive, or on the group

> basis under sections 169.1 and 169.10, or on the franchise basis under sections 169.1 and 169.11, and (except as herein otherwise expressly provided) shall be exclusively governed by this act."

Section 169.1, *supra*, in addition to the above quote, defines accident and sickness insurance generally and empowers the commissioner to approve all such policies.

Section 169.11, above referred to is Burns' 39-4261, *supra*.

From such sections it is evident that the Indiana Insurance Law places insurance written on the franchise plan on a comparable basis as other states. The minimum requirements for membership are less than those for group plans and individual policies are issued to those participating rather than a master policy. Policies are all of the same form but may differ as to amounts or coverage.

Also the franchise plan differs from individual policies in that it may only be sold to qualified groups which are itemized in subsection A 1, 2 and 3, *supra*. If a person does not fall in any of these groups, and since insurance on the franchise plan can only be sold to those groups and at a generally lower rate is not eligible to purchase such insurance.

Subsection A 1, *supra*, refers to five or more employees of any employer and is the only section which does refer to employees. Such language is clear and unambiguous and must be construed in its common and ordinary meaning.

2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201, reads, in part, as follows:

> "The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:
>
> "First. Words and phrases shall be taken in their plain, or ordinary and usual, sense * * *."

It only refers to a single employer, not an association of employers or multiple employers, and such employer must have at least five employees.

Subsection A 2, *supra*, refers to members of a trade, occupational or professional association, or of a labor union or like associations and does not include employees of these people as such. It is true that an employee might also be a member of such organization along with his employer, but his right to purchase such insurance on the franchise plan would be based on his membership rather than on his employee status, excepting, however, those instances in which he might qualify under Section A 1, *supra*.

Therefore, it is my opinion, that employees of members in such associations as are included in those set out in Section A 2, *supra*, are not qualified to purchase insurance on the franchise plan on the basis of the employer-employee relationship but must qualify as a member or as one of five employees of a single employer as set out in Section A 1, *supra*.

OFFICIAL OPINION NO. 58

December 3, 1963

Mr. Lewis F. Nicolini, Director
Indiana Employment Security Division
10 North Senate Avenue
Indianapolis, Indiana

Dear Mr. Nicolini:

This is in response to your letter concerning the Special Employment Security Fund, which was created by Section 2601, the same being Burns' (1963 Supp.), Section 52-1550, of the Employment Security Act, being the Acts of 1947, Ch. 208, as amended, and found in Burns' (1951 Repl., 1963 Supp.), Section 52-1525 *et seq.*

Your specific request is contained in the second paragraph of your letter which reads as follows:

> "Since there is some question regarding the manner in which these resolutions proposed the expenditure of certain funds, will you please furnish the Employment Security Board with a general Official Opinion regarding the manner in which funds can be spent from the