

**OPINION
45-115**

September 25, 1945 (OPINION)

HAIL INSURANCE

RE: Examination of Insurance Companies-Zones

This will acknowledge the receipt of your letter of September 13, 1945, in which you request the opinion of this office as to our interpretation of various sections of chapter 25-02 of the North Dakota Revised Code of 1943, and chapter 213 of the 1945 Session Laws, which amends section 26-0108 of the Revised code, relating to the examination of insurance companies.

You say, in substance, that heretofore the commissioners of the various states formed an association known as the "Association of Insurance Commissioners"; that this association meets twice in each year for the purpose of considering the problems of the various commissioners, and that at such meetings arrangements are made to create uniformity in matters pertaining to the regulation of insurance companies.

You say that one of many problems discussed and considered by the association is the problem of avoiding unnecessary duplication in the examination of insurance companies, that an arrangement has been agreed to under which the association elects an examination committee from its membership; that the committee has divided the states into six zones, each zone comprising eight states that the commissioners of each zone elect a "Zone Commissioner" whose function it is to look after the interests of each state in his zone. You say that each zone commissioner then appoints a zone chairman who determines the number of examiners required to examine the insurance companies in his zone; that he requests each commissioner to designate examiners and that thereupon such examiners are authorized to represent all of the states in that particular zone. In other words, when an examiner is assigned to duty he represents seven other states besides North Dakota, that the other states in this zone (zone 4) include South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, and Iowa; That if a Minnesota examiner is chosen, it also means that he represents North Dakota.

Subsection 6 of section 26-0104 of the Revised Code provides that the insurance commissioner shall charge "for an official examination, the actual expense and per diem incurred, such per diem charge not to exceed twenty dollars."

Section 26-0105 of the Revised Code provides that: "Whenever the laws of any other state - - - or when the rules and regulations of the insurance department of any such state - - - shall require of any insurance company - - - organized under the laws of this state, or any agent thereof - - - fees - - - other than and exceeding those required by the laws of this state of a like insurance company, or the agents thereof, organized under the laws of such other state, - - - which establishes an agency or transacts business in this state, shall be required to pay to the commissioner of insurance charges - -

- which such other state - - - requires of a like insurance company organized under the laws of this state when doing business in such other state, - - -."

Section 26-0107 of the Revised Code provides: "At least biennially, the commissioner of insurance shall cause the affairs of each domestic insurance company to be thoroughly inspected and examined. - - - Whenever he deems it prudent for the protection of the policyholders in this state, he in like manner shall cause any foreign insurance company applying for admission, or already admitted, to do business in this state to be examined, and such company shall pay the same charge for such examination as is prescribed in section 26-0104 for an official examination."

Section 26-0108 of the Revised Code, as amended by chapter 213 of the 1945 Session Laws, provides:

"All examinations of insurance companies required or permitted by law to be conducted by the insurance commissioner and whether or not the same are so-called convention examinations, shall be conducted by qualified regular employees of the insurance commissioner, and their compensation shall be paid out of the appropriation for that department. Any sums paid to said employees or to the insurance department or commissioner by the company or companies examined, as an examination fee or otherwise, shall be deemed to be state money, and forthwith shall be paid into the state treasury. Any sums paid to the employee or the department or commissioner as expense money for the examiner may be paid directly to the employee, and no employee may charge or collect from the state any expenses incurred in connection with any examination for or during which his expenses or any part thereof have been paid by any other person, firm, or corporation."

The effect of chapter 213, Laws 1945, is to reduce the amount which the insurance commissioner has been required to charge for an examination since July 1, 1921. Before that date the statutory fee was "not to exceed ten dollars per day" (and expenses). (See section 4929, compiled laws of 1913).

However, if the insurance commissioner shall find that other states impose a larger fee for examination than fifteen dollars per day, then under the provisions of section 26-0105 of the Revised Code the commissioner is required to charge the same fees for the examination of companies organized under their laws as they charge companies under the laws of North Dakota. For example, if the commissioner shall find that the insurance department of Minnesota required a per diem of \$25.00 and expenses for the examination of an insurance company incorporated under the laws of North Dakota, and doing business in Minnesota, then the commissioner must require a similar per diem, and expenses, for an examination ordered by him of a Minnesota firm doing business in North Dakota. Or if the commissioner should find that the state of New York, for example, requires a per diem of \$50.00 per day for the examination of a North Dakota company transacting business in that state, then he must require a like fee for the examination of a New York company doing business in North Dakota.

There are, however, two changes imposed by chapter 213 of the 1945 Session Laws with reference to examinations which undoubtedly will create a complicated, if not confused, situation. One is the requirement that the per diem charged insurance companies for examinations must be paid into the state treasury, and the payment by the state of the statutory fee of \$15.00 per day to North Dakota examiners, even though the fee actually paid by a foreign insurance company may be, as stated, \$20.00, or even \$50.00. This means that the per diem required to be paid by a foreign company in excess of \$15.00 per day would be retained by the state and the state would then derive a pecuniary benefit from the examinations. In other words, the excess would, in effect, be imposed as a tax or penalty.

The other change in the law, in effect prior to July 1, 1945, is the provision of chapter 213 of the 1945 Session Laws, which requires that:

"All examinations of insurance companies required or permitted by law to be conducted by the insurance commissioner and whether or not the same are so-called convention examinations, shall be conducted by qualified employees of the insurance commissioner, - - -."

When the members of the legislature enacted chapter 213 of the 1945 Session Laws, they evidently knew nothing of the reciprocal arrangement for examinations agreed to by the various state insurance commissioners. As far as North Dakota is concerned they, in effect, nullified the arrangement outlined in your letter, and mentioned in the beginning of this opinion. The provisions of chapter 213 of the 1945 Session Laws relative to examinations by regular employees of the insurance department are mandatory. You, as state insurance commissioner, have been left without any discretion. Any examination for and on behalf of your department must be made by a "regular employee" thereof. For under the provisions of said chapter 213, the state of North Dakota cannot pay the examiner of another state \$15.00 per day, or any other sum.

In view of this situation, the only thing for you to do, as we see it, is to make an arrangement, if that can be done, with the zone chairman of your zone to designate the examiners, appointed by you as "regular employees" of your department, to examine on behalf of your department, and on behalf of the association, domestic insurance companies, and such foreign companies doing business in North Dakota as you may designate.

For under the provisions of section 26-0107 of the Revised Code, you, as insurance commissioner, are required: "At least biennially - - - to cause the affairs of each domestic insurance company to be thoroughly inspected and examined - - - ." And since you cannot accept an examination of examiners of another state as the examination by your department, you are now required to cause such examinations to be made by examiners of your department regardless of what commissioners of other states may do in that regard.

With reference to foreign insurance companies, you are vested with discretion. Section 26-0107 of the Revised Code provides: " - - - Whenever he (insurance commissioner) deems it prudent for the

protection of policyholders in this state, he in like manner shall cause any foreign insurance company applying for admission, or already admitted, to do business in this state to be examined, and such company shall pay the same charge, - - -"

In other words, you are not required to examine foreign insurance companies unless you deem it necessary. When the provisions of section 26-0107 of the Revised Code were originally enacted, it was undoubtedly contemplated that each state would cause its domestic insurance companies to be examined and that such examinations would be generally, or usually, accepted by the commissioners of other states in which such companies did business. But now conditions have probably changed in that respect. However, you may, if you deem it sufficient, accept the examinations of other state examiners of foreign insurance companies doing business in North Dakota, if such examinations are made available to you. But such examinations cannot be regarded as examinations made at your instance and request or as examinations made by your office.

If the 1947 legislature is fully apprised of the reciprocal arrangement heretofore established between the insurance commissioners of the various states through their association, there will be no difficulty in getting chapter 213 of the 1945 Session Laws so changed as to permit this state to conform to the arrangement made by the association.

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