

OPINION
45-167

March 17, 1945 (OPINION)

INSURANCE

RE: Failure of Companies to File Report - Penalty

This is in reply to your inquiry with reference to section 26-0705 of the North Dakota Revised Code of 1943 regarding reports to be furnished to your office by insurance companies doing business in this state.

Said statute provides that, "Every insurance company doing business in this state shall transmit to the commissioner of insurance not later than the first day of March in each year a statement of its condition and business for the year ending on the preceding thirty-first day of December." The same statute further provides that, "He (Commissioner) shall not accept the annual statement from any company if the same was transmitted after the date designated in this section unless the same is accompanied by the penalty prescribed in this chapter for each day's delinquency in the filing thereof."

You state that several of the insurance companies doing business in this state have for some reason failed to transmit their reports to your office on the first of March this year and that some of them are several days delinquent. The question presented is whether or not a strict compliance with the terms of the statute must be required by your office; that is to say whether the penalty which is at the rate of \$100 per day shall be imposed for every day after the first of March.

In the first place, it should be observed that the statute requires that the reports shall be transmitted to the commissioner not later than the first of March, and further that the commissioner shall not accept the same if transmitted after March first unless accompanied by the amount of the penalty.

The legal construction of the word "transmit" is that it implies the sending from one person to another; to communicate; a letter deposited in an office is, in every reasonable sense, transmitted, whether the person addressed resides in the same place or at a different one. *Stanton v. Kline*, 11 N.Y. (1 Kern) 196, 199.

In a South Dakota case, *Loveland V. Perriton*, 207 N.W. 1200, 101, it was held that a brief deposited in mails on last of thirty-day period is regarded as "transmitted" within the meaning of the rule, and served in time, though it did not reach the clerk's office until the following day.

We are satisfied, therefore, that if it appears that any report was actually placed in the mails, addressed to your office, on or before the first day of March that there has been a compliance with Section 26-0705.

With reference to reports that have been transmitted subsequent to

the first day of March, we submit the following:

- 1) If the report of an insurance company has not been mailed on or before the date provided by the statute, then the question arises whether or not in the light of all of the circumstances the commissioner of insurance should invoke and insist upon payment of the penalty prescribed in said statute.
- 2) The intent and purpose of the said section is to enable the insurance commissioner to compel the filing of reports. It is not the intention of the statute to make the penalty mentioned in said section a source of revenue for the state or for the insurance department. It is rather intended as an effective means to compel compliance with the statute.

If an insurance company can show a valid reason for failure to complete and transmit its report within the time prescribed, the commissioner of insurance should give due consideration to same. In this connection, we must bear in mind that our country is at war, that there is a shortage of help and that large numbers of employees of insurance companies and other institutions in the nation are in the Armed Forces of the United States. Undoubtedly in many cases this situation makes it impracticable for insurance companies to make strict compliance with the laws of the several states with reference to the filing of reports.

It is our opinion that the insurance commissioner may exercise a legal discretion in such matters and if, in his judgment, the insurance company has established a valid reason which would justify the delay in filing of the report, it is the opinion of this office that the commissioner may accept the report within a reasonable time after the deadline without enforcement of the penalty since we fail to see where the department may be prejudiced thereby.

In this connection we might call attention to the fact that the tax commissioner, for instance, has at times extended the time for the filing of income tax returns where certain emergencies make such extension necessary or advisable. Likewise, the federal collector of internal revenue will on a proper showing grant extension of time in which to file income tax returns.

It is a well established rule that the law looks with disfavor upon penalties and the courts in dealing with statutory penalties will construe the same strictly and against their imposition. The reason for the rule is that it is an exceedingly harsh and rigid regulation and should be administered only in extreme cases and with great caution.

It is the opinion of this office, therefore, that if the insurance companies who fail to file the reports within the statutory time but have made a diligent effort in good faith to comply with such statute and can satisfy you as Commissioner that the failure is not due to intentional neglect or is inexcusable, then in your discretion you may forego enforcement of the penalty and accept the reports without payment of same.

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