

**OPINION  
57-118**

July 22, 1957           (OPINION)

INSURANCE

RE: Advance Premium Deposit Fund - Banking

This is in answer to your request for an opinion of July 8, 1957.

As we understand it, the problem for determination is whether an insurance company in setting up an advance premium deposit fund is violating the banking laws of North Dakota. You enclosed in your letter a copy of the advance premium fund clause for our reference.

We have studied the advance premium fund clause and those laws relating to banking practices. We have researched the problem and there appear to be no cases which decide the question in point. To our knowledge there are many companies in this state and out of this state that have provisions similar to the one in question.

There appear to be several differences between this type of advance premium payment and that of deposits in a bank which we believe would make this operation not within the purview or jurisdiction of banking laws. First, it is paramount that the individual making an advance premium deposit have a policy with the company. Secondly, there is a minimum and maximum amount that each policyholder may deposit to the credit of his policy. Thirdly, the company under certain conditions may reimburse the depositor of the funds deposited. Also, it is well established that the relationship between a bank and its depositor is that of a debtor and creditor; whereas between the insurance company and the insured it appears that the relationship of the company to the insured is that of a trustee holding the deposits for the payment of premiums upon the due date.

For the reasons stated above, it is the opinion of this office that an advance premium fund set up by an insurance company to secure the payment of future premiums is not violative of the banking laws.

LESLIE R. BURGUM

Attorney General