

March 3, 1960

SUBJECT: INSURANCE

WITHDRAWN

TO ALL AUTHORIZED INSURERS WRITING GROUP LIFE AND ACCIDENT AND HEALTH INSURANCE

Gentlemen:

This letter will supplement the Department's circular letters of March 12, 1957 and December 18, 1957, relating to agreements providing for installment payments of premiums for the first policy year under group life and group accident and health policies.

The two rulings referred to in the above-mentioned letters were limited to situations involving contractual provisions in the policy. The Department recently received inquiry as to whether an agreement which is made by insured and insurer independently of the policy and which extends credit through monthly installment payments of the first year premium with the balance payable at the end of the policy year, would be contrary to the provisions of Sections 204(2) and 221(7) of the Insurance Law.

For your information the pertinent portions of the opinion of Department Counsel in answering the instant question are quoted below:

"It is true that the two rulings were based upon facts involving contractual provisions in the policy, but it does not follow therefrom that observance of the statutory requirements is limited to agreements contained in the policy.

Your question assumes that the premiums which would be computed and stated in the policy would conform with the minimum monthly premium rates payable in advance, promulgated by the Department for group life insurance and filed with the Department for group accident and health insurance. However, the collection of the premiums would be subject to arrangement with the purchaser of the insurance for the extension of credit outside of the policy. While the policy would provide for the collection of the manual rates, the policyholder each month would pay a part, either 75% or 80%, of the premium and would promise to pay the balance at the end of the year, with interest adjustment.

"Keeping in mind the legislative background of the two statutory provisions, which were designed to put an end to unfair competitive practices by reason of unrestricted or cutthroat cutting of rates in group insurance business and resulting waste of funds which was prejudicial to the interests of policyholders, it should be manifest that these salutary statutory provisions will fail in their purpose if they are to be given a narrow interpretation, namely, that they are applicable only when the insurer contracts for the payment of a premium lower than either the minimum premium promulgated for group life insurance or the rate filed with the Department. If the statutes are to serve the purpose intended, they must be interpreted so as to prevent an avoidance of their impact by resorting to an artifice, such as an arrangement to extend credit outside of the policy.

"While, in view of the absence of an express statutory prohibition, I recognize that the extension of credit

outside of the policy is permissible, it does not follow that the practice may be used 'as an instrument for thwarting law'. It is obvious that the proposal merely simulates the extension of credit in order to permit the policyholder to actually pay the insurer less than the contract rate of the group insurance premiums by anticipating the receipt of a dividend on the policy. Another serious objection to the adoption of the practice is that it might lead, through competition, to the creation of pressures to pay artificial dividends.

"A close analogy to the legal concept on which the present proposals are based is the recent practice of granting policy loans to pay a portion of the initial premium at the inception of a so-called high cash value-minimum deposit life insurance policy, which, on account of the abuses resulting from the practice, representatives of your company, as well as those of others, opposed publicly. The Department, with the support of the industry, stopped that practice by the promulgation of Regulation No. 39."

Very truly yours,

[SIGNATURE]

Superintendent of Insurance