

Insurance Companies—Policies—Fire Insurance.

Under the laws of this state the General Insurance Company of America is authorized to write a participating fire insurance policy and to make use of its contributed surplus for the purpose of paying dividends on said policies.

George P. Porter, Esq.,
State Auditor and Commissioner of Insurance,
Helena, Montana.

February 25, 1927.

My dear Mr. Porter:

You have submitted your correspondence file relating to the admission to do business in Montana of the General Insurance Company of America.

You have requested my opinion whether this company can lawfully

write its so-called "participating policy" in this state, and also whether its method of paying dividends to policy holders is lawful under Montana statutes.

From the correspondence accompanying your letter I gather the following facts: The concern in question is a stock, fire insurance company. It proposes to write in this state, as it is doing elsewhere, the standard form of fire insurance policy on what it designates as a "participating plan." The essence of that plan, as I understand it, is as follows:

At the close of the year, or at some other time, the exact date of which is not apparent from the correspondence submitted to me, the board of directors sets aside by resolution a definite dividend which is paid uniformly to all policy holders of the company. This appears, in effect, to be the same thing done by mutual companies and does not apparently constitute any innovation in insurance practice, except that it has not heretofore been done by stock companies operating in this state.

From your correspondence it appears that the only question presented is whether writing of insurance is forbidden on this plan under section 6121, R. C. M. 1921, which reads as follows:

"No insurance company organized under the laws of this state, or doing business in this state, shall make or permit any discrimination or distinction in favor of individuals between insureds or property of the same class in the amount of premiums or rates charged for policies, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon, nor shall any such company or agent pay or allow, offer to pay or allow, as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantages in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance."

The above described method of returning a part of the profits of the company to the policy holder in the form of a dividend is, in my opinion, clearly not discrimination. This conclusion seems to follow necessarily from the fact that the dividend is uniform in amount and is paid to all policy holders. While it may be material from the standpoint of good business practice to inquire when this dividend is apportioned and paid and whether it is paid out of surplus or earnings, these considerations would seem to have no bearing upon the question of discrimination.

I note that section 6121, *supra*, is practically identical with section 7077 of the Washington insurance code which prohibits rebates and forbids the payment of anything of value not specified in the contract of insurance. The fact that this company has been permitted to do business in the state of Washington under a law similar to ours is at least a fact to be given consideration in answering your question.

The payment of a uniform dividend, as above indicated, is not a discrimination within the meaning of section 6121, supra. Neither is it a "rebate of a premium payable on the policy;" nor, in my opinion, is it "a consideration or inducement not specified in the policy contract of insurance." The policy itself is clearly marked "participating plan," and on the first page thereof it contains the following clause:

"The Board of Directors, in accordance with section 7 of the Company's Articles of Incorporation, may from time to time distribute equitably to the holders of participating policies issued by said Company such sums out of its earnings as in its judgment is proper."

In my opinion the language above quoted from the policy sufficiently specifies in the contract of insurance the participating nature of the policy.

You have also asked whether "the method and manner of payment of dividends to policy holders is lawful under our statute." My understanding of the facts is that these dividends are paid in part, at least, out of the contributed surplus of the company. I do not find anything in the laws of Montana that, in my opinion, would prohibit this company from using its contributed surplus for the purpose of paying these dividends, in the first instance.

The correspondence between your office and the insurance company makes reference to the provisions of section 6141, R. C. M. 1921. This section prohibits insurance companies from "making any dividend except from the surplus profits arising from their business." The section does not say "underwriting profits." It says "profits arising from their business." The act then provides for the creation of a fund which must be reserved "for estimating such profits."

If therefore, this company complies (as I assume it will) with the requirements of section 6141 with regard to the creation of a reserve fund, I do not know of any reason why it may not properly use its contributed surplus as well as its underwriting profits for the purpose of paying dividends on its participating policy.

It is therefore my opinion that there is no legal objection to permitting this company to write in this state its participating policy described in your letter and to disburse dividends to its policy holders in the manner indicated in the correspondence submitted to me.

Very truly yours,

L. A. FOOT,
Attorney General.