STATE OF MAINE.

REPORT

OF THE

ATTORNEY - GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1904.

AUGUSTA
KENNEBEC JOURNAL PRINT
1905

INSURANCE.

"Executive agents" must comply with Insurance Laws of this state, relating to the apointment of agents.

Rebate. The compensation of "executive agents" from funds of insurance companies is not repugnant of the Rebate Laws of the state.

Hon. S. W. Carr, Insurance Commissioner for the State of Maine, Augusta, Maine:

Dear Sir:—In answer to your communication under date of July 24, 1903, relating to a blank application for the appointment of "executive agents" for the Mutual Reserve Life Insurance Company, and a blank certificate of agreement to be entered into between said company and the applicant for such agency, asking whether said contract conflicts with the statutes of this State, I would say that two questions seem to be raised by your inquiry, to wit: first, that of agency; second, that of rebate, under the insurance laws.

In relation to the question of agency the law is specific as to what constitutes an agent under our insurance laws. Revised Statutes 1883, chapter 49, section 19. Also section 73 of said chapter, as amended by the Public Laws of 1885, chapter 295; 1887, chapter 109; 1891, chapter 112; 1895, chapter 95.

Said section 73, as amended, provides among other things, as follows: "For each such license the commissioner shall receive two dollars, and if any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he forfeits," etc.

The agreement of the Mutual Reserve Life Insurance Company submitted to me for inspection, relates back to the application of anyone desiring to be such "executive agent," and said application is made a part of said agreement.

Referring, then, to the application, we find the agreement of the applicant to be appointed, as follows: "to aid in promoting and maintaining the company's business; to advise it, upon request, as to the fitness of applicants for agencies; to furnish, upon request, to the company annually the names of ten persons whom I deem assurable; and to give it any information that may

come to my knowledge which I think would be to its advantage or protect it from injury or loss, but it is understood and agreed that I shall not solicit assurance, nor forward applications for assurance to said company."

The words quoted in the application, "to aid in promoting and maintaining the company's business," are so excessively broad that all of the work in detail of the regular soliciting agent's business may be swept in and covered by this expression. Neither are these words qualified, except in this respect, to wit: "and it is understood and agreed that I shall not solicit assurance nor forward applications for assurance to said company." This last provision, in my judgment, is not sufficient to take the matter from under the insurance laws of this State which provides, as hereinbefore set out, to wit: "if any person solicits, receives or forwards any application for insurance to any company without first receiving such license," etc.

My opinion, then, in relation to the first query is, that "executive agents" sought to be appointed by said Mutual Reserve Life Insurance Company, come within the provisions of our insurance law as agents, and that they must comply with the provisions relating to such agents before they can legally act as "executive agents."

As to the question of rebate, on a careful examination of chapter 128 of the Public Laws of 1891, I do not see that the provisions of the application and of the agreement conflict with said law. The application and agreement when taken together provide for a certain kind of compensation for "executive agents." They provide that each $1,000 of insurance which is maintained on the company's books in force through a certain period of time shall be the basis of the "executive agent's" pay at the rate of $1 per thousand. This $1 is not deducted from the premium to be paid and the insured gets no advantage therefrom. The agreement seems to provide compensation on a sliding scale, which compensation is based on the number of thousands of dollars of original insurance issued during ten years between December 31, 1902, and December 31, 1912, at the rate of $1 on each $1,000 of insurance. This compensation is to be paid out of the "expense apportionment." It cannot be denied but that insurance companies have a legal right to set aside a certain amount of their income for the purpose of paying expenses in

conducting business. For example, insurance companies may employ agents at stated salaries, which must necessarily come from some fund set aside for the expenses of the company. The provision for payment of "executive agents," as provided in the agreement, seems to be in the same line, only the amount of compensation depends on the amount of insurance which the "executive agent" is instrumental in securing and continuing in force.

I do not find that the application and agreement conflict with the insurance laws of this State. Our rebate law hereinbefore referred to provides generally that there shall be no discrimination in favor of individuals between insurants of the same class and expectation of life, in the amount or payment of premiums or rates charged for policies of life, or endowment insurance, or in dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts which it makes; that no company or agent, or any other person, shall make any contract of insurance or agreement as to such contract except as expressed in the policy issued thereon; that no company, agent, or any other person shall pay or allow, or offer to pay or allow, as inducement to insurance, any rebate of premium payable on the policy; or any special favor or advantage in the dividends or other benefit to accrue thereon; or any valuable consideration or inducement whatever, not specified in the policy contract of insurance.

The application and agreement submitted do not conflict with these provisions. However, it does not seem wise for the insuranc department to either approve or disapprove such contract so to be carried out between insurance companies and their agents, in fact I do not understand that the department, through its commissioner, intends either to approve or disapprove such contract or agreement, but desires to know only whether or not such agreement and contract conflict with the statutes of this State.

In brief, then, my opinion is,

First: That if such "executive agents" are appointed under applications and agreements such as are submitted, by insurance companies, then such "executive agents" must comply with the laws of this State relating to the appointment of agents before

they can enter legally upon the duties required of them by the agreement.

Second: That the application and agreement therewith do not infringe upon the insurance laws of this State relating to rebates.

October 2, 1903.

NEW ENGLAND REAL ESTATE AND TITLE COMPANY.

The methods employed by said company in carrying on its business are repugnant to the law relating to Loan and Building Associations. The purposes set forth in the charter of said company do not permit the corporation to carry on the business indicated by its contracts.

Hon. F. E. Timberlake, State Bank Examiner, Augusta, Me.:

Dear Sir:—In answer to your letter under date of September 22, 1903, calling my attention to the business which the New England Real Estate and Title Company, located at Bangor, is doing, and asking my opinion as to whether or not the business as carried on by said company conflicts with the law relating to loan and building associations of this State and the requirements of said law, I submit the following opinion:

The New England Real Estate and Title Company was organized under the general laws of this State in April, 1903, and by its purposes set forth, purports to carry on a real estate business. The purposes as set out in the certificate of said company are within the laws of the State. The real question is whether or not said company in carrying on its business is exceeding its authority and rights under its certificate of organization, and conflicting with the law relating to loan and building associations.

To fully decide this question it is important, first, to review briefly the kind of business which said corporation is doing. From the certificate of incorporation nothing can be gathered as to what kind of business the company is doing, but by its circular and contract we find that it is doing business on the installment plan and collecting moneys for the purpose of securing homes for its patrons. It issues contracts for the deposit of money in installments by the covenantee.