December 9, 1963

Guy R. Whitten, Deputy Commissioner — Insurance

Albert E. Guy, Ass't Attorney Gen. — Attorney Generals

Premiums of Domestic Mutual Fire Insurance Co.

FACTS: The Harrison Mutual Fire Insurance Company has notified the Department on several occasions that in its opinion it is unnecessary to have their premium notes signed. The Department replied that a written promise to pay a premium was not a note unless signed by the person to be charged therewith.

On December 3, 1963, this company requested the Deputy Commissioner for permission to adopt premium procedures as outlined in Section 85, Chapter 60 to replace its premium note system. To support its position that such is legal, the company attached an opinion by Attorneys Corliss and Lane, Bridgton, who cited the following portion of Section 85: "Any mutual company in place of the premium note required by law may provide in the policy of insurance as a condition of the insurance made by the policy that the insured and legal representatives shall pay in addition to the stipulated premium of such policies such sum as may be assessed by the directors of the company pursuant to the laws of this state, but such contingent liability of a member shall not be less than an amount equal to the cash premium written in his policy."

Additionally, ample law was cited to the effect that the plain and obvious meaning of the statute must be given when interpreting the section.

QUESTION: May the Harrison Mutual Fire Insurance Company adopt a method of receiving premiums other than by signed premium note or cash premium method.

ANSWER: No.

/INION: Section 35 of Chapter 60 provides in part as follows: "Any mutual company..... shall be authorized by the Commissioner to write business and such company may take a premium note ....., or in lieu of said note it may charge and collect a premium in cash and .....fix the contingent mutual liability of its members for the payment of losses and expenses.....".

I, therefore, must conclude that these are the only two methods by which a domestic mutual fire insurance company may charge and receive premiums.

This section does not conflict with Section 85, as cited by counsel for the company, that a mutual company may dispense with the premium note if certain provisions including additions to the policy language pertaining to contingent liability of a member which "shall not be less than an amount equal to the cash premium written in his policy."

Restated, the statutes pertaining to this question provide, ~~i~~ Section 35, that the two methods by which premiums may be charged by the company are either one of two methods only. The first is the premium note method. If a company wishes to adopt the second method, which is cash premium, then the conditions under which it may be adopted are as provided in the cited portion of Section 85.

I must agree with Attorneys Corliss and Lane that policies may be issued by the company in accordance with Section 85 but this in no way implies that one or the other of the two premium plans do not have to be followed. The company must either take a signed premium note or obtain a cash premium coupled with certain policy language changes. I conclude that it is not possible under existing statutes for a company to both refuse to take a (signed) premium note and not collect a cash premium. One premium method or the other must be followed.

Respectfully submitted,

Albert E. Guy
Ass't Attorney General