

MAINE STATE LEGISLATURE

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December 11, 1963

Irl H. Withee, Deputy Commissioner

Banks and Banking

George C. West, Deputy

Attorney General

**Commissions Paid on Life Insurance Covering Borrowers from
Financial Institutions**

Your letter requesting an opinion on the above-entitled matter, together with the letter from Joseph B. Campbell, is hereby acknowledged.

FACTS:

A financial institution, as a part of its lending service, provides or makes available insurance to protect payment of loans in case of death or disability of the borrower prior to the time the loan is made. The financial institution then shares in the commissions reflected in the premiums paid on the insurance.

QUESTION:

Can a financial institution properly share in the commissions reflected in premiums paid on insurance covering borrowers from the institution on credit transactions of less than 5 years duration?

ANSWER: Yes.

OPINION:

R.S. 1954, chapter 60, sections 170-A to 170-N, as enacted by Public Laws 1961, chapter 221, provides in part as follows:

"Sec. 170-A. Purpose. The purpose of sections 170-A to 170-N is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in sections 170-A to 170-N is intended to prohibit or discourage reasonable competition. Sections 170-A to 170-N shall be liberally construed."

"Sec. 170-B. XI.

A. 'Credit life insurance' means insurance on the life of a debtor pursuant to 'or in connection with a specific loan or other credit transaction.'

B. 'Credit accident and health insurance' means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy."

"Sec. 170-I. Issuance of policies. All policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the commissioner. The premium or cost of such insurance when issued through any creditor shall not be deemed interest, or charges, or consideration, or an amount in excess of permitted charges in connection with the loan or other credit transaction, and any benefit or return or other gain or advantage to the creditor arising out of the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, of the State of Maine. The insurance premium or other identifiable charge for such insurance may be collected from the insured or included in the finance charge or principal 'of any loan or other credit transaction at the time the transaction is completed.' " (Emphasis added.)

The Legislature intended to bring about regulation of a relatively new form of insurance which was growing in volume when it enacted the amendments to chapter 60, supra. The underlined portion of section 170-I, above, must necessarily contemplate a sharing of commissions reflected in premiums paid on insurance covering borrowers from financial institutions.

I am mindful of the provisions of chapter 60, sections 146 - 158, defining unfair trade practices, including rebates, and also the opinion of Orville T. Ranger, Assistant Attorney General assigned to the Insurance Department, dated July 26, 1961, wherein it was indicated that a lending institution, in the disbursement of insurance certificates under a master policy, could not accept any commission, kick-back, or other type of compensation from an agent of an insurance company. However, sections 170-A to 170-N of chapter 60, became effective September 16, 1961, and specifically permitted this practice in connection with loans or other credit transactions. Therefore, to the extent set forth herein, the opinion of Orville T. Ranger regarding payments to lending institutions in connection with insuring borrowers' loans in case of death or disability is no longer controlling.

George C. West
Deputy Attorney General