

MAINE STATE LEGISLATURE

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Yes ✓
September 11, 1967

Harold E. Trahey, Acting
Commissioner
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Insurance
Attorney General

Countersigning Fees for Insurance Agents and Brokers.

FACTS:

The 103rd Legislature passed P. L. 1967, c. 379, "An Act Relating to Countersigning Fees for Insurance Agents and Brokers," which Act repealed and replaced 24 M.R.S.A. § 2514, subsection 2 and becomes effective October 7, 1967. Two questions have been posed by an insurance company to the Acting Insurance Commissioner for interpretation, which questions have been referred to this office. We have been asked to assume for purposes of opinion #2, a 3-year DPP (delayed premium payment) policy with a commission of \$30 on each of the anniversary dates, which DPP policy requires the counter-signature of a resident agent.

QUESTION #1:

Is the new act applicable only to policies with inception dates after October 7, 1967, or does the act also apply to policies written prior to that date but on which no commission as yet had been paid?

ANSWER #1:

See opinion.

OPINION:

The Public Laws of 1967, c. 379 reads as follows:

"2. Countersigning fee. A nonresident broker or nonresident agent shall pay, as a countersigning fee, to a resident agent who countersigns an insurance contract providing fire, casualty, fidelity, surety, inland marine and ocean marine coverage, subject to exceptions cited under section 525, 50% of the commission on the first \$50 of commission, and a

negotiated amount of commission on the balance of the commission, based on the services rendered or to be rendered by the countersigning resident agent. If the laws of a state of the United States or province of the Dominion of Canada in which the nonresident broker or nonresident agent is licensed as a resident broker or agent imposes upon a Maine broker or agent a requirement to pay a greater countersignature fee of a specific amount or percentage of the commission, the countersigning fee shall be the same as would be imposed on the Maine broker or agent by the laws of such state of the United States or province of the Dominion of Canada." (Emphasis supplied.)

The reference statute requires that a commission be paid to a resident agent "who countersigns an insurance contract. . . ." The reference statute does not prescribe when the contract must be written. The effective action on the part of the resident agent that entitles him to the 50% of the commission on the first \$50 of commission, and a negotiated amount of commission on any balance of commission, is the countersigning of the insurance contract. Thus it is our opinion that since P. L. 1967, c. 379 becomes effective October 7, 1967, an insurance contract countersigned by a resident agent on or after October 7, 1967, entitles the resident agent to a commission authorized by the reference statute, and contrariwise an insurance contract countersigned by a resident agent before October 7, 1967 is not subject to the commission requirements of the reference statute.

QUESTION #2:

Does this new Act mean that the first \$50 of commission refers to the total three-year premium or does it mean that the countersigning resident agent will receive at least 50% of each annual payment of the entire three-year period?

ANSWER:

See opinion.

OPINION:

It is our opinion that there is only one commission payable to a countersigning resident on a three-year EPF policy even though the commission is not fully earned until the end of the three-year period and even though the commission may be forwarded to the agent in more than one installment.

The reference Act refers to a payment computed as follows:
". . . 50% of the commission on the first \$50 of commission, and a negotiated amount of commission on the balance of the commission, based on the services rendered or to be rendered by the countersigning resident agent." (Emphasis supplied.) Thus we conclude the commission referred to in the statute is the commission based on the three-year premium.

Jerome S. Matus
Assistant Attorney General

JSM/eh