

MAINE STATE LEGISLATURE

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November 17, 1972

Frank M. Hogerty, Jr., Commissioner

Insurance

Charles R. Larouche, Assistant

Attorney General

"No Agent Will Call" advertising

This replies to your memo of November 8, 1972.

It appears that certain direct mail health insurance use in their literature the phrase "No agent will call." It is assumed that this phrase is truthful. It further appears that NALU has resolved against this advertising because it depreciates or minimizes the role of other persons in the insurance business.

You ask whether you should take action to compel insurers to stop using this phrase in their advertising. In my opinion, the answer to that question is negative.

It has been assumed in the statement of facts that the used phrase is truthful; hence it is not "false advertising". This practice is not prohibited by Chapter 23 of 24-A M.R.S.A. Section 2166 provides a procedure whereby you can take action against a practice which Chapter 23 has not defined as "unfair," but which you, after hearing, determine to be an unfair practice.

However, prior to exercising your discretion to conduct such a hearing, I would suppose that you would insist that it appear to be substantially justified, e.g., by substantiated written complaints and/or by in-depth inquiry and study by your staff concerning the practice, and a tentative judgment on your part that there is a seeming probability of substance to the contention that the use of such a phrase is an unfair practice in the insurance business.

I am unable, at the moment, to conceive how such a phrase, if truthful, can be held to be a practice of such unfairness that it can be prohibited under Section 2166. However, your own experience and expertise in the insurance industry may lead you to think otherwise, in which case, I am open to suggestion, and you, in any event, have the discretionary power to undertake a hearing in this matter.

CHARLES R. LAROCHE
Assistant Attorney General

CRL:mfe

NOT A FORMAL OPINION