

MAINE STATE LEGISLATURE

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December 18, 1972

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Whether or not the Maine Insurance Code requires a health insurance agent's license before appearances in TV and Newspaper Commercials in Maine on behalf of the sale of health insurance by an Insurance Company, e.g., Art Linkletter for National Home Assurance Company?

In my opinion, the answer to subject question is negative.

24-A M.R.S.A. § 1505 defines a "health agent" as follows:

"A 'health agent' is any person authorized or appointed by an insurer to solicit applications for, or negotiate the procurement of health insurance contracts on behalf of the insurer, other than an agent licensed as a health insurance under sections 1503 ('general lines agent' defined) or 1504 ('life agent' defined)."

24-A M.R.S.A. § 1512, subsection 1 provides:

"No person shall in this State be, act as or hold himself out to be, with respect to subjects of insurance resident, located, or to be performed in this State or elsewhere, an agent or broker or consultant, unless then licensed as such under this Title. No person shall in this State be, act as, or hold himself out to be an adjuster unless then licensed as an adjuster under this Title, except as provided in section 1855 (nonresident adjusters of special, catastrophe losses)."

24-A M.R.S.A. § 1513, subsection 2 provides:

"In addition to persons otherwise excluded therefrom, the definitions of agent, broker, consultant or adjuster shall not be deemed to include, and no license shall be required as to:

* * *

"2. Salaried employees of insurers or of life agents or life brokers who do not solicit or accept from the public applications for life insurance."

24-A M.R.S.A. § 1514, subsection 1 provides:

"The purpose of a license issued under this chapter to an agent or broker is to authorize and enable the licensee actively and in good faith to engage in the insurance business with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the

purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation upon insurance solicited or procured by or through him upon his own interests or upon those of other persons with whom he is closely associated in capacities other than as an insurance agent or broker."

The critical question is whether or not a person, such as Art Linkletter, who appears in TV commercials shown in Maine and in newspaper commercials distributed in Maine, urging the public TV viewers and newspaper readers to purchase health insurance from the company he represents, constitutes the "solicitation of applications for health insurance contracts on behalf of the insurer," within the meaning of 24-A M.R.S.A. § 1505?

Black's Law Dictionary, Fourth Edition, defines the word "solicit" as follows:

"**SOLICIT.** To appeal for something; to apply to for obtaining something; to ask earnestly; to ask for the purpose of receiving; to endeavor to obtain by asking or pleading; to entreat, implore, or importune; to make petition; to plead for; to try to obtain; and, though the word implies a serious request, it requires no particular degree of importunity, entreaty, imploration, or supplication. People v. Phillips, 70 Cal. App. 2d 449, 160 P. 2d 872, 874. To tempt a person, to lure on, especially into evil. People v. Rice, 383 Ill. 584, 50 N.E. 2d 711, 713. To awake or excite to action, or to invite. In re Winthrop, 135 Wash. 135, 237 P. 3, 4; Briody v. De Kimpe, 91 N.J. Law, 206, 102 A. 688, 689. The term implies personal petition and importunity addressed to a particular individual to do some particular thing. Golden & Co. v. Justice's Court of Woodland Tp., Yolo County, 23 Cal. App. 778, 140 P. 49, 58." (emphasis supplied)

It seems to me that our Legislature could not have intended to use the word "solicit" in its broadest possible scope of any "appeal." Such a meaning would seem to require all TV and radio stations, newspapers, magazines, radio commercial announcers, and other advertisers to obtain a license as a "health insurance agent" prior to presenting such "advertisements." Such a construction would exceed the purpose of such licensing expressed in Section 1514, subsection 1, above-quoted, i.e., to facilitate public supervision of the activities of one engaged actively and in good faith in the insurance business with respect to the general public. For the same reason, persons simply giving testimonials are not engaged in "solicitation of applications of insurance" within the meaning of Section 1505. However, such reason would not exclude such persons as Art Linkletter from the application of Sections 1505 and 1512, since they are engaged in the insurance business.

December 18, 1972

However, it is clear from Section 1513 that not all persons who are actively engaged in the insurance business need to be licensed as "insurance agents." See especially subsection 2 of Section 1513, above-quoted. Since it is clear that the word "solicit" is not used in its broadest sense in Section 1505, what is the limit of its scope?

Black's Law Dictionary indicates that the usual meaning of the word "solicit" does not encompass "advertising" but rather that:

"The term implies personal petition and importunity addressed to a particular individual to do some particular thing." (emphasis supplied)

The TV performances by such persons as Art Linkletter are addressed to a broad, general public rather than to a particular individual. Such public performances are clearly not a "personal petition." Accordingly, such performances would seem to fall within the category of "insurance advertising" rather than within the category of "insurance solicitation." Cf. Golden & Co. v. Justice's Court, 23 Cal.App. 778, 140 p. 49 and Maryland Casualty Co. v. McTyler, 150 Tenn. 691, 266 S.W. 767.

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NOT A FORMAL OPINION