

MAINE STATE LEGISLATURE

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JOINT SPECIAL LEGISLATIVE INVESTIGATING COMMITTEE

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Re: Insurance Department.

Augusta, Wednesday, Dec. 12, 1940. Counsel: Donald W. Webber
Hubert Ryan

Augusta, Wednesday, Dec. 12, 1940.

BROOKS BROWN, having been duly sworn, testified as follows:

(By Mr. Donald W. Webber)

Q. State your full name, Mr. Brown?

A. Brooks Brown.

Q. You reside in Augusta?

A. I do.

Q. And you are in the insurance business?

A. Yes, sir.

Q. Are you an employee of Macomber, Farr & Whitten?

A. Yes, sir.

Q. On a salary basis?

A. Salary and commission.

Q. Now you have no broker's license, have you?

A. Those licenses I think are all as individual agents.

Q. You have none yourself?

A. No; not as a broker.

Q. You are a regularly licensed agent for certain companies?

A. Yes, sir.

Q. You are not a licensed agent of the Zurich Company?

A. No, sir.

Q. Now I presume you are aware that the present state automobile fleet insurance is covered by the Zurich Company?

A. I understand so.

Q. Did you have anything to do with the writing of that business?

A. No, sir.

Q. Were you aware that an allocation of a part of the Commission had been made to you?

A. Yes.

Q. When did you first learn of that?

A. I should say several weeks ago.

Q. After the allocation had been made?

A. Yes.

Q. And not before?

A. I would say so. I think it must have been. I don't know when it was made of course. I know this was three or four weeks ago I first was informed.

Q. Who informed you?

A. One night just before the office closed Cony Weston came in and said the Governor had sent word down by him to me that I was to get some commission on the State fleet.

Q. A year ago did you receive part of the commission on the Indemnity Company of North America coverage?

A. I did.

Q. And Mr. Ebyd received part of it?

A. I understood so.

Q. Did Mr. Tozier receive part?

A. As to that I don't know.

Q. Did you have anything to do with the writing of that business?

A. No.

Q. Now, as I understand it, this is part of a custom that has gone on under many governors? Is that right?

A. That is as I have understood it, yes.

Q. And it is a form of political patronage?

A. That is as I understand it.

Q. Were you aware of the fact that whatever part of this Zurich commission you received would come out of Mr. Jortberg's pocket?

A. No.

Q. What was your understanding?

A. My understanding would be this: Where there was a special agent of the company he would never receive any commission from business of that kind, and I understood Mr. Jortberg is a special agent of the Zurich. I never have heard of a case where a man, a special agent, received commission on the State's business.

Q. What do you mean by a special agent?

A. That means the direct representative of the company who does business with the agents and looks after the company's business in the various territories.

Q. Well, if Mr. Jortberg were not to receive this commission, why shouldn't it go to the Zurich general agent of the State of Maine?

A. I don't know. Simply as you stated, Mr. Webber, that it has been a custom for many years, as I understand it, for commissions or some of that business to be given up to friends of the governor, different governors.

Q. You don't have to do anything; you don't have to perform any service at all? It is simply a precedent?

A. No. I can see of some case where you might be of some service, but ordinarily I do not think so.

Q. How much did the Indemnity Company of North America

amount to so far as you were concerned?

A. I think it was just a few dollars under four hundred, \$390 as I recall it.

MR. MacNICHOL: Mr. Brown, what companies are you special agent for?

A. I am not a special agent for any company.

Q. What companies are you agent for?

A. Well, for probably thirty or forty different companies. There would be the Employer's Liability, Maryland Casualty, Massachusetts Bonding.

Q. Any fire insurance companies?

A. Yes, a number of them. Granite State, New Hampshire State, North American.

Q. Well, just so that I can understand your position: You work for Macomber, Farr & Whitten on a salary basis, and in your own right you represent thirty-five or forty insurance companies as agent; you represent those companies for the interests of the firm you work for?

A. Yes, I should say so, because you see each partner in the firm is licensed, and then, for instance our office manager, who is not a member of the firm, is licensed for these various companies, and I am licensed as an employee.

Q. In other words, you as an employee of the Macomber, Farr & Whitten Company would not actively seek business that your firm was seeking probably through other channels?

A. No; nothing that the firm would be interested in, naturally I would not be seeking.

Q. And, by the same token, they might seek business ~~you~~ for you in the companies you represent?

(By Mr. MacNichol)

A. It would be possible.

Q. In other words, it would be possible also that they might, in writing insurance, grant to some of the companies you represent a certain allocation of that business in order to split it up?

A. Yes, that would be possible, although I don't know that it is ever done.

Q. You mean in this way: If they take a risk of \$100,000 they would allocate to some of the companies you represent a certain fractional part of that business?

A. I might explain it this way. Usually we all four are agents for the same companies. We would not be representing different companies necessarily.

Q. Then you represent the same companies?

A. As Mr. Macomber, Mr. Weston, Mr. Washburn. We would represent the same companies. Perhaps there are two or three companies I might be licensed for and perhaps one other person would be licensed for, small companies we give very little business to.

Q. In the past do you care to tell us how much these presents from the Governor have amounted to?

A. The only one I have ever received in my life was the one last year for the North American Indemnity.

Q. That is the only one you have ever received?

A. That is the only one I have ever received.

Q. And that was retained by you for your own use?

A. Certainly. In fact, if you will pardon me, I was going to say, knowing that this was an insurance investigation, I thought I would check up on my checkbook what I did with the money last year. If

you would be interested, I have it right here.

Q. In other words, you have a checkbook there to prove these funds were retained by yourself?

A. I got it out of my desk this noontime after being summoned over here.

Q. I am not interested in your personal checkbook. What I am interested in finding out is whether that check was merely to you for endorsement or to you personally.

A. To me personally.

Q. Did that constitute any part of your salary as an employee of Macomber, Farr & Whitten?

A. No; it didn't. As a matter of fact, I received an increased salary the first of last January, and this check was not received by me until during the month of January.

(Off record)

Q. (By Mr. Webber) Mr. Brown, if a man contacts the State of Maine and discusses insurance coverage, goes out and puts in time and effort persuading his company to give the State of Maine a much lower rate than they have been ever able to receive on a similar contract, hasn't he justly earned the entire commission on that?

A. I still say this, Mr. Webber: Take your special agents on your fire policies that prepare data for municipalities, they do a great deal of work for their companies in getting fire insurance data together to get perhaps reduced rates, and the commission never goes to the special agent; it always goes to the local agent, although he may do

no work on it at all. I have never known of special agents receiving any commission at all. They are employed on a salary from the company, of course.

Q. In the illustration that you have mentioned, doesn't the commission go to the agent for that company?

A. Yes, it would in that case.

Q. Now you are not an agent for the Zurich Company, never have been?

A. No.

Q. Which brings me back to my original question, that to be consistent and apply the illustration which you have given to this situation, let us say Mr. Jortberg ought not to get it, shouldn't it then go to an agent for the Zurich Company?

A. The only thing I could answer, Mr. Webber, simply based on the custom of years, the Governor has allotted that to whom he sees fit, because other agents of the company may have had nothing to do with securing that business.

Q. Now this custom you speak of is exclusively a custom of the State and the Governor of the State; that does not carry over into ordinary private business, private concerns; such insurance would always go to an agent for the company in question?

A. Well, you run into this situation: For instance, you take certain companies, large companies, who have a lot of insurance to go out will give that to any number of agents scattered over a wide area perhaps and representing many different companies, although of course in that instance they would be agents of some of the companies that were insuring.

Q. What I am getting at is this custom is unique, is it not?

A. I think so.

CHAIRMAN TOMPKINS: Is there any large amount of this liability insurance issued to the State of Maine outside of the fleet of trucks?

A. I wouldn't know about that, Senator. I don't know, I am sure. The only check I have ever received was that one last year.

Q. What other liability policies does the State of Maine carry, if you know?

A. I do not think at the moment of any, sir.

Q. Do they carry liability policies on their elevators?

A. I understand they do on some. No; I do not think they do. It is possible they might carry public liability on the building here, but I never heard of it. That is something I wouldn't know about.

Q. Do they carry a public liability insurance in the National Guard on their motor vehicles?

A. They do, I believe, on the National Guard through the Federal service, I think it is, so I have understood.

Q. How is that insurance conducted?

A. I do not know. I think that is placed directly with the companies, but I don't know.

Q. By whom?

A. I imagine the Adjutant General's department, or whoever is in charge of Federal property or State property in the Adjutant General's department.

Q. A special agent you feel is the go-between between the State and the Insurance company -- is that the idea?

A. The special agents of course represent their companies in looking after collections from the agents and looking after their business and contacting new agents and really handle the business of the companies in the territory.

Q. And doesn't necessarily have to hold a license to write insurance?

A. I don't know about that. I don't know just how the special agents are licensed, I am sure.

Q. Well, on this insurance of motor vehicles in the National Guard, of course there is a premium to be paid on that, isn't there?

A. I should suppose so.

Q. And a commission goes to somebody on that?

A. I imagine so.

Q. You don't know what disposition is made of those commissions?

A. No, sir.

Q. (By Mr. Webber) Mr. Brown, where you were treated by the department as the writing agent, why wouldn't you be the one that signed the policy as the writing agent instead of Mr. Jortberg?

A. Well, I don't know.

Q. Wouldn't you expect to be? Wouldn't that be natural?

A. Well, I should think that the person signing the policy should be the representative of the company.

Q. Even though he is a special agent?

A. A special agent, I suppose, can sign a policy. I do not know of anything to the contrary.

Q. But he cannot collect any commission?

A. I suppose he could. I said I never heard of it being done. I do not know any reason why he could not collect a commission, but I never happened to hear of it.

Q. Have you ever seen this policy before?

A. No.

Q. Isn't this true, that if there is a profit-sharing arrangement and the policy is theirs, so that if there is a good experience record there will be a return premium at the end of the period, wouldn't there also be a return commission coming back?

A. I should think so.

Q. Now isn't it also true that in such cases the company always looks to its general agent in the State for the return commission?

A. Yes.

Q. Now how would the general agent in this case, if he were called upon to make a return commission, protect himself, for example, as to you, where he has no contractual relation with you whatsoever?

A. I do not see how it could be done.

Q. Well, if at the end of the period there was a return premium and therefore a return commission, and you were called upon to pay a return commission and refused, there would be no way to make you, would there?

A. Well, offhand I do not think of any.

Q. So doesn't that put the general agent in the State in a somewhat embarrassing situation?

A. I should think so.

Q. So that you wouldn't blame the general agents in the State of Maine if they became somewhat concerned over a situation like that?

A. No. I have never given the matter any thought, although you just brought it up at this time.

Q. That is, we are trying to get at the ramifications of this custom which we realize has been followed and the different practical results it could lead to, as to whether or not it is a good custom.

A. It is something of course we have all heard about for years. My first experience with it was last year, and that I think was based on a matter of friendship of nearly thirty years with Governor Barrows. We were classmates in college and have been very good friends since then. He wanted to favor me and he did.

MR. MacNICHOL: Mr. Brown, as agent what insurance have you recently written for the State's account?

A. I do not think of any.

Q. How far back since you have written any?

A. Why, several years ago we wrote a little group of health and accident, in other words the employees were given permission to buy health and accident insurance upon our solicitation and the money to be deducted from their pay once a month. I think there are several companies that have that arrangement. And then prior to that a number of years ago an agent in Skowhegan, Miles Carpenter, and I, did the same thing on life insurance. Probably ten years ago we did the same thing.

Q. Recently, we will say within the past four years, you have written no insurance for the State?

A. I do not think of anything now.

Q. You didn't participate in the general fire insurance division?

A. No, sir.

(Witness excused)

The foregoing is a true transcript of my shorthand notes in the above matter.



Reporter

Wednesday, Dec. 12, 1940.

CHARLES JORTBERG, Jr., recalled and testified as follows:

(By Mr. Donald W. Webber)

Q. We have had supplied to us some information today from the Secretary of State's office with regard to the University of Maine cars, and they have informed us there that those cars are registered as owned by the University of Maine. We understood from you that your impression was that they were registered as State-owned cars. We were trying to get this cleared up.

A. They start out with these S license numbers all the way down through. Now they probably on the Secretary of State's registration records show the name of the University of Maine, but they have S. numbers.

Q. Well, you take the fact that they got S plates as indicating that they were State-owned property?

A. That is right, and that they were insured as owned cars, because the insurance policy covers one condition only and that is owned equipment. A schedule is listed for guidance of the company, but the actual exposure is determined by audit at the end of the year, and the Secretary of State's records is one of the sources of information. The only cars that can be insured that are not owned must be insured by endorsement and specifically stated. For instance, the Forestry Service, I believe it is, has a list of a certain number of vehicles that are loaned to them, and they are insured by separate endorsement that specifically states that they are loaned, so that

it is only natural, year in and year out, that those being insured as owned automobiles and having S plates the same as any other State cars--

(Off record)

Q. (By Mr. Webber) Is it true that over a period of years the University of Maine has had a bad loss ratio on its automobile coverage in proportion to the other departments of State?

A. Yes, it has.

Q. That has been continuous over a period of years?

A. That has been continuous for three or four years.

Q. So that, in your opinion, it is fair to assume that if the University of Maine cars were not included in the blanket coverage there might be a further reduction in rate?

A. Yes.

Q. Now will you explain again just what your arrangement with the Zurich was and is with regard to your compensation?

A. At the time that I requested the company to quote the rates that were finally quoted, they agreed to quote those rates on a proviso that I in turn would agree to make an arrangement with them to exercise the same control and supervision on the details of the insurance under this policy as I had been doing previously as an employee of the State. Now in arriving at an amount of money to be paid to me for the service, I immediately said there would not be a sufficient amount of money accruing under commissions to enable me to put the necessary time in; and they said they would allow in turn the normal amount of money that they would

spend for a safety engineer and for claims supervision and for special agency supervision moulded together, making up a fee. Now the size of that fee wasn't predetermined, it could not have been, because the estimate as to what the premium would amount to could not be made at that time without having a definite schedule, but the whole thing was wrapped up into one package.

Q. Including the total amount of commissions?

A. Including the total amount of producer's commission, which was four per cent, not the gross commission, including the total amount of producer's commission.

Q. The other one per cent, so far as you and the company were concerned, to go to whom?

A. To the general agent through whom the business was cleared, the Dunlap agency.

Q. Why didn't the Dunlap agency as the general agent sign the policy?

A. Why, that would be an unusual thing. Where there is a licensed agent the agent usually signs policies. For instance, in years past I have been a producing agent for the Travelers Insurance Company. They have a branch manager who is equivalent to general agent. I would always countersign policies on business I personally produced. As a matter of fact, in this instance I think I insisted on signing the policy, I insisted on the company stamping the name of the agent on the letter binder.

Q. The statement was made to us today that a special agent never gets a commission.

A. Well, that is probably true. A special agent of a company is usually classified as a salaried man. He is paid his salary and paid his travel expense.

Q. That is, you don't admit you are a special agent?

A. I certainly am not a special agent. A special agent of a company has the duty of going out and making new agency contacts, securing business and following collections; his is a production job, and at no time has the company intimated that they so considered it by asking me to talk to anybody as a possible prospective agent. At no time have the company reimbursed me on travel expense allowance either. This is an unusual independent contract. I do not believe there are many instances of where companies will allocate to an individual the normal amount of money they would spend on a safety engineer on claim supervision and on special agency supervision as to detail. In other words, I also arranged with the company that every detail of this business would go just exactly as the negotiations for the business had gone, through me.

Q. Now you made your relationship to the company and the basis of your compensation plain to these people prior to the time that the Governor wrote his letter to the company? Is that right?

A. Yes; that was made in the early part of October, when Mr. Lovejoy wrote his first letter. It might have been a natural assumption. I wasn't criticising anybody

or attempting to. There probably had been the natural assumption that I had some kind of a salaried job with the company. I didn't go around volunteering what my arrangement was with the company. As a matter of fact, outside of the general agent I don't think anybody in the State knew what it was.

I was down on that particular date to correct that impression and make the statement that any portion of the commission that was allotted to anybody else was being taken out of my pocket. I believe those were the words I used.

Q. In the very first preliminary discussions, was it made plain to you that if this business was written that they would expect to pay the commission to somebody, not naming any particular individual?

A. No; the question of commission didn't come up for discussion. The question of commission came up only at one time; that was the day Mr. Weston from the executive council and Mr. Lovejoy had me phone over to the company and ask for a letter confirming the arrangement. When I was asked if the gross commission on this business would be the same as the previous year, I answered it by saying I did not know what the previous commission was but this year the gross commission was five per cent.

CHAIRMAN TOMPKINS: Did they give you to understand you would not receive that commission at that time?

A. No; there was no discussion of it. It was one of those questions that didn't come up at all. I was asked point blank about the commission. I said that while I did not know what it had been in the past, that

the bureau in approving the rate had approved five per cent gross commission. That is the only commission discussion that I have any recollection of.

Q. Well, why would they be interested in the commission?

A. Why, when you are negotiating insurance contracts in large amounts, it is not an uncommon question to raise. Since I was here yesterday afternoon, I have talked with one of the largest insurance buyers in the State, and we were talking on the rating of his compensation insurance where he has had a bad experience, and I told him I thought it was unfortunate that the past year had produced such a low premium. He wanted to know why, and whether or not that affected the commission. It does in that case. It is not uncommon. As a matter of fact, I have had that question put up to me in a good many instances by insurance purchasers; and the Insurance Commissioner, who approves policy forms and rates and amount of commissions, it is the most natural thing in the world for him to ask the amount of commission.

Q. Well, were you aware of the practice that had been going on in regard to these commissions being paid to other agents in the State than the one effecting the insurance?

A. I do not believe that a similar situation has arisen, Mr. Tompkins. I think that the selection of the company, policy form and rate has been made direct to the company by the Insurance Commissioner. I think that after that has been made that there were commissions available and that the Governor and Council allotted those commissions.

I do not know of a case similar to this where the negotiations were completed by an individual who would be in the class of being an agent.

Q. If this business was conducted directly with the company, what about the commissions in that case?

A. In that case I assume the same procedure would have been followed, that the commissions would be allotted by the Governor and Council.

Q. To someone other than the agent of the company?

A. Yes; to whoever they may select in the business.

MR. MacNICHOL: Would it be possible for the insurance company to credit the amount of the commission against the policy?

A. As I understand the interpretation of the laws of the State concerning rebating, that would prohibit that. There is an insurance statute that prohibits the company from allowing to the purchaser.

Q. If that statute were removed--

A. It would then permit the practice in the general insurance business, if it were removed, that would be a bad practice. It would enable me to go in, and if the commission were one hundred dollars, to buy your business away from some legitimate, honest broker over here by offering you a rebate of ninety dollars.

Q. If the statute was changed in the case of the state itself so it would act as its own agent?

A. I would say so. Undoubtedly when you negotiate rates you have acquisition cost which is commission, you have administration expense, you have the loading for

catastrophe losses, loading for safety engineers and casualty, loading for general miscellaneous expenses, and the remainder for losses. If the state were to deal direct with the company with no commission paid, it should reflect in a lower rate.

Q. In all lines of insurance?

A. I would say so.

CHAIRMAN TOMPKINS: How many agencies does the Zurich Company have in the State?

A. That I don't know, Mr. Tompkins.

Q. Do they have more than one?

A. Only one general agent but more than one agency, how many I don't know. I have never seen the list. I know there are some up north, some down towards Ellsworth and Bar Harbor and in the vicinity of Bangor and one or two other locations. How many I don't know.
(Off record)

Q. ~~XX~~ You can't understand what gave them the idea, either Mr. Weston, Mr. Lovejoy, the Governor or any member of the council, that you were not to receive the commissions on this business?

A. I haven't the least idea. The only thing that I could figure out on it at all was as I told Mr. Lovejoy and Mr. Weston the day I made the trip down, was that somebody had assumed I had gone to work on a salaried job. Now if I had gone with the company as a salaried man, I would receive no commission. There would be a commission accruing on this. If there were a commission accruing, the natural supposition on their part would be to have it paid to someone rather than have the company retain it.

CHAIRMAN TOMPKINS: Why wouldn't it be paid to an agency of the company?

A. Well, it may have been paid to the general agent of the company in this instance. It should have accrued to the general agent. He is the one that has got to spend money on postage, office administration work and to follow the thing through while it is on the books of the company, and is certainly entitled to something for the work that he does.

Q. You haven't talked with the Governor on this matter?

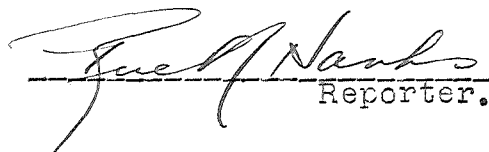
A. I asked Mr. Weston the day I talked with him: "Do you want me to come up and talk with the Governor?" He said, "It is a matter he probably would leave to me anyway, and I think you would be better off to leave it with me." So I did.

Q. Apparently you and the State of Maine were proceeding on two separate theories as to your standing in effecting this insurance?

A. It would seem so.

(Witness excused)

The foregoing is a true transcript of my shorthand notes in the above matter.


Reporter.