Opinion No. 36-1496

December 18, 1936

BY: FRANK H. PATTON, Attorney General

TO: Honorable George M. Biel Superintendent of Insurance Santa Fe, New Mexico

*{*39}* We have your letter dated December 1st requesting our opinion as to *{*40}* whether or not the operation of "Automobile Experience Rating Plan," as set forth in the submitted automobile casualty manual at page 63, would be illegal under the New Mexico Insurance Code.

Briefly, said "Automobile Experience Rating Plan" contemplates a special individual rating covering automobile public liability and property damage applied to any fleet of automobiles under one ownership and operating management. Provided, however, certain minimum requirements must be met relative to the number of vehicles insured or relative to premium volume. The premium rate for each fleet of automobiles is to be fixed at stated intervals according to the actual past loss experience of such fleet.

Our statutory insurance law does not specifically mention experience rating. However, section 71-148 of the 1929 Compilation prohibits rebating and also prohibits discrimination in rates charged for any contract of insurance. Further, Section 71-162 of the 1929 Compilation requires all rates and policy forms to be filed with the Insurance Department. We believe the evident intent of the aforesaid Section 71-148 is to establish uniform rates of insurance throughout the state, and to maintain an absolute standard of insurance rates.

The question here presented is whether or not the experience rating plan is discriminatory. If such plan is discriminatory we believe it would be prohibited by the above cited sections. If not discriminatory, we are unable to cite any state statute prohibiting such plan.

In holding the "Automobile Experience Rating Plan" discriminatory and, therefore, prohibited by the Insurance Code of Washington, the Attorney General of the State of Washington, in an opinion dated December 20, 1934, said:

"Manifestly the plan would work an inequality of rating as among vehicles of the same type operating in the same territory and subject to the same traffic hazards. To illustrate, in the city of Seattle there are hundreds of light delivery vehicles. Let us consider thirty of such vehicles, all of the same type, and operating under the same conditions as to territory, hours, etc. Group 1 consists of ten vehicles each individually owned and operated. Group 2 consists of ten vehicles owned by A, and group 3 consists of ten vehicles owned by B. The drivers of all thirty vehicles are entitled to the highest rating as careful, experienced drivers, judged by any recognized test. All thirty vehicles are regularly and carefully inspected and kept in repair and order. Since group 1 consists of

individually owned vehicles, it would be ineligible to the plan, and the manual or average rate would apply. Therefore, group 1 would never be governed by the same rate as group 2 or group 3. It is highly improbable that group 2 would ever sustain exactly the same loss experience as group 3. Therefore, the actual rates actually fixed for groups 2 and 3 would probably never be the same. We would, then, have three different rates applicable among these thirty vehicles."

It might be said at this point we find no case law involving discrimination in casualty insurance rates.

"In holding illegal a plan by which automobile insurance could be secured by members of a group at rates less than those charged individuals, not members of the group, for the same kind of insurance, the attorney general of Pennsylvania in an opinion dated May 8, 1928 (10

Pa.D.&C.R. 610), said:

'We are not to be understood as holding that discrimination prohibits reasonable and proper classification. Classification of rates according to *{*41}* the nature of the risks is well known in other lines of insurance. If, however, a classification is to be recognized, the rate applicable to the class must be applied to individuals as well as to members of a designated organization or group who are able to qualify or come within the qualification. The basis for such classification will, of necessity, be established according to principles well known in the insurance world and applied in other classes of insurance, with such modifications as may be necessary to fit them to automobile insurance.' "

It occurs to us the plan would result in discrimination between risks entitled to the same classification. We fail to see any logical reason why a line of demarcation should be drawn between an owner possessing one vehicle and an owner possessing a "fleet" of many vehicles relative to the insurance rate applicable thereto.

Public liability and property damage in automobile insurance is simply insurance against the hazard incident to and connected with the operation of motor vehicles on the highway. Wherein is said hazard greater or less, as applied to one man's vehicle or to another man's vehicles? We are unable to see wherein the mere size of a "fleet" could have any real relationship to such hazard.

In view of all of the foregoing, it is our opinion that the Automobile Experience Rating Plan is discriminatory and therefore prohibited by our Insurance Code.

Returned herewith is correspondence and Manual of Automobile Insurance submitted to us.

By: EDWARD P. CHASE,

Asst. Atty. Gen.