



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

December 28, 1979

FILE NO. S-1475

REGULATED INDUSTRIES:
Necessity for Schedule Rating
in Establishing Workmen's
Compensation Insurance Rates

Philip R. O'Connor
Acting Director
Department of Insurance
Springfield, Illinois 62767

Dear Director O'Connor:

This responds to your predecessor's letter in which he asked whether the Department of Insurance has authority to approve a rating plan that eliminates schedule rating from the area of workmen's compensation rates. The plan was submitted by the National Council on Compensation Insurance, a rating organization which is licensed by your Department, and represents the major portion of insurance carriers. The letter states that schedule rating allows a subjective modification of workmen's compensation manual rates by as much as 25% upward or downward; that schedule rating is used

Philip R. O'Connor - 2.

to reflect six characteristics of the risk not reflected in experience: (1) Premises (2) Classification peculiarities (3) Medical facilities (4) Safety devices (5) Employees, and (6) Management; that Illinois is the only State still to allow the use of schedule rating; that it is generally recognized that elimination of schedule rating will have no effect on whether rates are adequate, excessive or unfairly discriminatory; but that its elimination may remove a competitive feature. I am of the opinion that the Department of Insurance may approve a rating plan that eliminates schedule rating from the area of workmen's compensation rates.

There is no provision of article XXIX of the Illinois Insurance Code (Ill. Rev. Stat. 1977, ch. 73, par. 1065.1 et seq.) which requires that workmen's compensation and employer's liability insurance rates promote competition. Section 454 of the Code (Ill. Rev. Stat. 1977, ch. 73, par. 1065.1) states as follows:

"The purpose of this Article is to promote the public welfare by regulating workmen's compensation and employer's liability insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among companies in rate making and in other matters within the scope of this Article. Nothing in this Article is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the afore-

Philip R. O'Connor - 3.

mentioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This Article shall be liberally interpreted to carry into effect the provisions of this Section."

This section states that nothing in article XXIX is intended to prohibit or discourage competition. The fact remains, however, that nothing in article XXIX directly or indirectly requires that the effect on competition be a factor in approving a rating plan. Your Department's approval of a rating plan which eliminates schedule rating would therefore not be a violation of article XXIX of the Illinois Insurance Code (Ill. Rev. Stat. 1977, ch. 73, par. 1065.1 et seq.).

I note that the rating plan has been proposed by the National Council on Compensation which is an Illinois licensed rating organization. Subsection (4) of section 459 of the Illinois Insurance Code (Ill. Rev. Stat. 1977, ch. 73, par. 1065.6) specifically authorizes cooperation among rating organizations and companies. I further note that Illinois is the only State in which the schedule rating system is still used. Subsection (1) of section 466 (Ill. Rev. Stat. 1977, ch. 73, par. 1065.13) specifically requires that the Director of the Department "shall give due consideration to the rating systems on file with him and in order that such rules and plans may be as uniform as is practicable among the several States, to the rules and to the form of

Philip R. O'Connor - 4.

the plans used for such rating systems in other States."

It is not certain what effect, if any, the elimination of schedule rating would have on competition. Even if it would lessen competition, I am of the opinion that the approval by your Department of the rating plan submitted by the National Council on Compensation Insurance and the subsequent elimination of schedule rating would not be in violation of the Sherman Act (26 Stat. 209, as amended, 15 U.S.C. § 1 et seq.) or the McCarran-Ferguson Act (59 Stat. 33, as amended, 15 U.S.C. § 1011 et seq.). To the extent that the insurance business is regulated by State law, it is exempt from the Sherman Act, the Clayton Act and the Federal Trade Commission Act (15 U.S.C. § 1012).

In Allstate Insurance Co. et al. v. Lanier et al. (4th Cir. 1966) 361 F. 2d 870, a North Carolina statutory program of regulation, established and actively supervised by the State, required all insurance companies selling automobile liability insurance in North Carolina, to adhere to rates and standards as promulgated upon initiative of a rating bureau composed of all insurance companies to be approved by the commissioner of insurance. The plan restricted approved deviations from prescribed rates to upward deviations only. The court held the program valid and said that it had not been preempted by the

Philip R. O'Connor - 5.

Sherman Act or by the McCarran-Ferguson Act. The facts in this case are similar to those presented in your letter. See, also, Lowe v. Aarco-American, Inc., 536 F. 2d 1160 (7th Cir. 1976) and American Mutual Reinsurance Co. v. Calvert Fire Ins. Co., 52 Ill. App. 3d 922 (1977).

Consequently, I am of the opinion that the Department of Insurance may approve a rating plan for workmen's compensation insurance rates that does not include schedule rating. The reason for regulation of these insurance rates as set forth in section 454 of the Illinois Insurance Code (Ill. Rev. Stat. 1977, ch. 73, par. 1065.1) is to prohibit rates which are excessive, inadequate or unfairly discriminatory. Whether the proposed elimination of schedule rating will or will not cause workmen's compensation insurance rates to be excessive, inadequate or unfairly discriminatory, is a question of fact which you will have to determine.

Very truly yours,

A T T O R N E Y G E N E R A L