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INSURANCE SOLICITOR—LICENSED AS CASUALTY INSURANCE SOLICITOR — EMPLOYED BY LICENSED INSURANCE AGENT, SECTION 644-1 G. C., MAY TAKE APPLICATIONS FOR HEALTH AND ACCIDENT INSURANCE, DIRECTED TO NAMED INSURANCE COMPANY — PROVISO, REPRESENTATION, SOLICITOR FOR AUTHORIZED AGENT, NOT AGENT OF COMPANY.

SYLLABUS:

An insurance solicitor employed by a licensed insurance agent and licensed under authority of Section 644-1, General Code, as a casualty insurance solicitor, may take applications directed to a named insurance company for health and accident insurance, provided such solicitor does not represent himself as agent of the company, but represents himself only as solicitor for an authorized agent.

Columbus, Ohio, July 24, 1940.

Hon. John A. Lloyd, Superintendent of Insurance,
State House Annex,
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion is as follows:

“We find that it has been the administrative policy of this Division to restrict the solicitation of accident and health business written by casualty companies to persons licensed as agents for such companies under Section 644, General Code. Apparently this policy has been based somewhat on practical considerations. By virtue of the written application taken by the agent, the applicant generally warrants his answers to the questions thereon. It has been the apparent view of the Division that the agent taking such an application should be a direct representative of the company.

In opinion No. 5078, rendered by one of your predecessors in 1936, it was held that:

‘A domestic corporation, authorized by its charter to transact the business of insurance agency, may be licensed as an agency for a fire or casualty insurance company where the persons who are to

act for such agency corporation possess the qualifications required of an insurance agent and are licensed therefor.'

A number of corporate agencies in the state have sub-agents writing only health and accident insurance. Under said Opinion No. 5078 if this Division requires such sub-agents to be licensed as agents for the casualty companies writing health and accident insurance rather than as solicitors for the agency under Section 644-1, General Code, it will be necessary for such persons to be licensed for all the fire and surety companies for which the corporate agency is licensed, even though such persons limit their activities entirely to the solicitation of accident and health insurance.

In view of this situation, I desire your opinion on the following:

1. Is it permissible for a person licensed as a casualty solicitor to take an application for accident and health insurance directed to a named company, in view of the language of Section 644-1, General Code, that 'Solicitors shall not represent themselves, by advertisement or otherwise, as agents for insurance companies for which their employer may be the authorized agent'?
2. If your answer to that question is in the negative, is it permissible for one licensed as a solicitor to take an application for health and accident insurance addressed to the agent for whom he is licensed to solicit and not containing reference to the particular insurance carrier to which the application will be forwarded?"

Section 644-1, General Code, provides in part as follows:

"Any agent duly authorized and licensed as provided in the preceding section, and representing one or more insurance corporations within this state may employ such solicitors as he may desire to represent him and his agency, *but such solicitors shall not represent themselves, by advertisement or otherwise, as agents of insurance companies for which their employer may be the authorized agent, and such solicitors shall in all instances represent themselves only as solicitors for said authorized agent.* Upon written notice by any such duly authorized and licensed agent that he has employed such a person as solicitor, the superintendent of insurance, if he is satisfied that the applicant is a suitable person and intends to hold himself out in good faith as a solicitor; that the applicant is honest and trustworthy; that he has training or instruction in the business and understands the duties and obligations of a solicitor; that he is familiar with the insurance laws and with the provisions of the policies and contracts of insurance he proposes to solicit and that in applying for such license it is not appointee's purpose or intention principally to solicit or place insurance on appointee's own property or that of relatives, employers or employees or that for which they or the appointee is agent, custodian, vendor, bailee, trustee or payee, shall issue to him a license in such form as may be prepared

by the superintendent, and such notice shall be upon a form furnished by the superintendent of insurance and shall be accompanied by a statement under oath by the solicitor which shall give his name, age, residence, present occupation, his occupation for the five years next preceding the date of the notice, the kinds of insurance for which he wishes license to solicit, and such other information, if any, as the superintendent of insurance may require, upon a blank furnished by him.

Such appointee, if he has not theretofore held a license as an insurance solicitor in this state, shall be required to submit to a hearing and examination as to the above qualifications.

For the purpose of licensing solicitors, insurance shall be considered as of three classes, namely: (1) fire, including marine and inland transportation, (2) casualty, and (3) surety. Each solicitor's license shall state the kind or kinds for which issued and no solicitor shall be licensed for the same kind of insurance by more than one agent. * * * " (Emphasis mine.)

Section 644, General Code, which immediately precedes Section 644-1, General Code, provides inter alia for the licensing of insurance agents, but it is expressly provided therein that said section shall not apply to life insurance companies, including fraternal, nor to mutual protective assessment fire associations. Any agent licensed as provided in this section may by reason of the provisions of Section 644-1, General Code, hereinbefore quoted, employ solicitors to represent him and his agency. You state that it has been the administrative policy of your division to limit the solicitation of accident and health insurance written by casualty companies to persons who are licensed as agents under authority of Section 644, General Code, and not to permit solicitors employed by such agents under authority of Section 644-1, General Code, to solicit such business. You further state that the Division of Insurance apparently adopted this view because such insurance policies are ordinarily issued only where a written application is procured from the applicant by the agent wherein the applicant warrants that the answers to questions contained in the application are true and that therefore such application should be taken only by a representative of the company.

You will note that Section 644-1, supra, classifies solicitors as follows: (1) fire, including marine and inland transportation, (2) casualty, and (3) surety. If health and accident insurance be properly classified as casualty insurance, it would seem that the General Assembly has provided that solicitors employed and licensed under authority of Section 644-1, General Code, may solicit applications for such insurance.

By reason of paragraph 2 of Section 9510, General Code, that class of

insurance companies commonly denominated as casualty insurance companies is authorized to transact the business of health and accident insurance.

In 11 C. J., page 30, under the heading "Casualty Insurance," I find the following:

"A term of quite frequent use, yet it cannot be said that its definition has been very accurately settled by the courts. It is commonly held to include those forms of indemnity providing for payment for loss or damage to property (except from fire or the elements), resulting from accident or some such unanticipated contingency, and for loss through accident, or casualties resulting in bodily injury or death. The term, however, is more properly applied to insurance against the effects of accidents resulting in injuries to property. The four great headings into which this subject is usually divided are Personal Accident, Liability, Steam Boiler, and Plate Glass' insurance. "

In 1 Couch on Insurance, 23, Section 13, it is said:

"In some jurisdictions a distinction, largely based on statutes, is drawn between accident and casualty insurance, the former being held to relate to accidents resulting in bodily injury or death, and the latter to property losses resulting from accident or casualty, such as boiler, plate glass, injury to property by strikes, etc. But as a general rule 'casualty insurance' covers accidental injury both to persons and to property. In fact casualty insurance has been defined as an insurance against loss through accidents or casualties resulting in bodily injury or death."

Webster defines the term "casualty" as "chance; accident; contingency; also, that which comes without design or without being foreseen; an accident."

From the foregoing, it seems clear that the term "casualty" as used in Section 644-1, supra, includes accident insurance. While it is not so apparent that the term includes health insurance, nevertheless, in view of the fact that the class of insurance companies which for years have been commonly known as casualty insurance companies, is and has been authorized to transact the business of health insurance, I take the view that the General Assembly when it used the term "casualty" in Section 644-1 intended to include thereunder health insurance.

It therefore follows that solicitors employed by agents pursuant to Section 644-1, General Code, may solicit the business of health and accident insurance on behalf of their employers, provided they do not represent themselves as agents of the insurance company for which their employer is the

authorized agent and provided that they shall in all instances represent themselves only as solicitors for such agents.

However, this conclusion should result in no hardship to those persons who obtain this class of insurance through a solicitor. Section 9586, General Code, provides as follows:

“A person who solicits insurance and procures the application therefor, shall be held to be the agent of the party, company or association, thereafter issuing a policy upon such application or a renewal thereof, anything in the application or policy to the contrary notwithstanding.”

By reason of this section, as between the insurance company which issues a policy and the insured, the solicitor must be regarded as the agent of the company even though he is in fact only employed by a duly authorized agent as solicitor.

I am therefore of the opinion that a person licensed as a casualty solicitor may take an application for accident and health insurance directed to a named company.

Respectfully,

THOMAS J. HERBERT,
Attorney General.