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INSURANCE—FIRE AND CASUALTY—PREMIUM PAYMENT PLAN; WHAT AMOUNTS TO A DEVIATION FROM RATING PLAN, §3935.07 RC—PRE-PAID PREMIUM IN FORM OF NON-NEGOTIABLE NOTE, NOT ASSET OF COMPANY, §3925.08 R.C. —INTEREST ON SUCH NOTES SUBJECT TO TAXATION, CHAPT. 5729., R.C.

SYLLABUS:

1. A plan whereby an insurance company, authorized by a rating plan filed with the superintendent of insurance to issue policies of fire or casualty insurance at particular rates payable in advance, issues such policies with the premium (1) paid partly in cash in advance, and (2) with the balance covered by a non-negotiable promissory note, secured by the assignment unearned premiums under such policy, with 5% simple interest payable in monthly installments, and where such policy contains a general cancellation provision under which the insurer may cancel such policy upon default of payment of any installment on such note, is a deviation from such rating plan within the meaning of Section 3935.07, Revised Code, or is a modification of such rating plan with the meaning of Section 3937.03, Revised Code, as the case may be.

2. The unpaid balance on such a promissory note, not past due and not in excess of the unearned premium on the policy with respect to which such note is given, should not be deemed an admitted asset of a domestic insurance company under the provisions of Section 3925.08, Revised Code, nor of a foreign insurance company under the provisions of Section 3927.08, Revised Code.

3. The amounts received by the insurer by way of interest on such notes should be reported as payments of premiums in the tax return made by the insurance company as provided in Chapter 5729., Revised Code.

Columbus, Ohio, June 4, 1958

Hon. Arthur I. Vorys, Superintendent of Insurance
Department of Insurance, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"An insurance company authorized to do both fire and casualty business in Ohio has adopted the following plan by which an insured may pay premiums:

"1. The insured makes a cash payment of a part of the premium to be paid under the policy and signs a promissory note, copy of which is attached, for the amount of the balance of the premium, the note being payable in monthly installments at 5% simple interest.

"2. The cash down payment is sufficiently large to keep ahead of the short rate cancellation table in the event that the insured cancels the policy with respect to which the plan is in force. The down payment is also sufficient to protect the security of the company under the promissory note in the event that the insured fails to make the required monthly installments.

"3. The insured is given a coupon book containing coupons indicating the amount due each month, which can be torn out and mailed to the company along with the monthly installment payment. A copy of the coupon book is attached.

"4. When the promissory note has been executed and received by the company's accounting office the premium for the policy is marked paid on the company's books. At this time the company establishes the unearned premium reserve required by law, including the whole amount of the promissory note as if the premium had been paid in advance in full. The policy is issued at the filed rate. There is no endorsement on or attached to the policy and no reference therein to the promissory note.

"5. At the same time the company places the promissory note in its investment port-folio as an investment in an interest

producing obligation. The interest derived on the note is deemed investment income by the company. The expense of taking the promissory note instead of premium in advance is deemed by the company to be investment expense.

"On these facts, I would appreciate very much your answering the following questions:

"1. Does the plan above described differ so substantially from the installment premium plan considered in 1941 Opinions of the Attorney General, No. 4485, that it is not subject to this Department's regulation as a rating plan or a deviation from the schedules of rates established and maintained by bureaus of which the company is a member, pursuant to Chapters 3935 and 3937 of the Revised Code?

"2. Your attention is directed to Section 3925.08 and Section 3927.08, Revised Code. In view of these sections, should this Department treat the amount of unpaid promissory notes, not past due, and not in excess of the unearned premiums on the policies for which the notes are taken in payment of the part of the premium, as an admitted asset of the company under Ohio law?

"3. Your attention is directed to Sections 5729.02 and 5729.03 of the Revised Code. In view of these sections, should the interest collected by the company on the promissory notes be treated as part of the gross premium for the purpose of the imposition of the Ohio premium tax?"

Your reference to a possible deviation from rating schedules established as provided in Chapters 3935., and 3937., Revised Code, may first be considered. In the former chapter we find Section 3935.02, Revised Code, which reads in part:

"Sections 3935.01 to 3935.17, inclusive, of the Revised Code apply to all kinds of insurance on risks located in this state which stock, mutual, and reciprocal *fire* and marine insurers, except mutual protective associations organized under section 3939.01 of the Revised Code, may write. * * *" (Emphasis added)

Also in this chapter is Section 3935.04, Revised Code, which provides for the filing with the Superintendent of Insurance of rating schedules or rating plans, by companies writing insurance of the sort above described, or by licensed rating bureaus on their behalf. As to such filings it is provided in Section 3935.07, Revised Code:

"Every member of, or subscriber to, a rating bureau shall adhere to the filings made on its behalf by such bureau, except that any insurer who is such a member or subscriber may make

written application to the superintendent of insurance for permission to file a deviation from the class rates, schedules, rating plans, or rules respecting any kind of insurance or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification, and a copy thereof shall be sent simultaneously to such rating bureau. The superintendent shall set a time and place for a hearing at which the insurer and such rating bureau may be heard, and shall give them not less than ten days' written notice thereof. If the superintendent is advised by the rating bureau that it does not desire a hearing, he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation, the superintendent shall give consideration to the available statistics and the principles for rate making as provided in section 3935.03 of the Revised Code. The superintendent shall issue an order permitting the deviation for such insurer to be filed if he finds it is justified, and it shall thereupon become effective. He shall issue an order denying such application if he finds that the resulting premiums would be excessive, inadequate, or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission, unless terminated sooner with the approval of the superintendent." (Emphasis added)

The several kinds of insurance to which Chapter 3937., Revised Code, is applicable are listed in Section 3937.01, Revised Code, as follows:

"Sections 3937.01 to 3937.17, inclusive, of the Revised Code apply to *casualty* insurance including fidelity, surety, and guaranty bonds, and to all forms of motor vehicle insurance, on risks or operations in this state, except:

"(A) Reinsurance, other than joint reinsurance to the extent stated in section 3937.10 of the Revised Code;

"(B) Accident and health insurance;

"(C) Insurance against loss of or damage to aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of aircraft;

"(D) Insurance against workmen's compensation liability;

"(E) Insurance of titles to property against loss by reason of defects, encumbrances, or other matters;

"(F) The insurance of the correctness of searches for instruments, liens, charges, or other matters affectiing title to property." (Emphasis added)

Each insurer writing insurance on the risks thus described is likewise required, by Section 3937.03, Revised Code, to file with the superintendent "every manual of classifications, rules, and rates, and *every modification*

thereof which it proposes to use," or to have such filing made on its behalf by a licensed rating organization. As to such filings, Section 3937.06, Revised Code, provides in part:

> "Every member or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may file with the superintendent of insurance a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance (,or) for a class of insurance which is found by the superintendent to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or for which separate expense provisions are applicable. * * *"

It is my understanding that the company actually involved in your query originally confined its insurance in Ohio to casualty risks but since September 5, 1955, acting under Section 3941.02, Revised Code, amended effective that date, has become a so-called "multiple line" company and now writes insurance on fire risks also. It would appear, therefore, that Chapter 3935., Revised Code, is applicable to certain of the insurance this company writes and that Chapter 3537., Revised Code, is applicable to certain other such insurance.

Here it is to be noted that there is a marked difference in the language of Sections 3935.07 and 3937.06, Revised Code, the so-called "deviation" sections. I do not regard this as significant, however, for although Section 3937.06, Revised Code, provides for "deviation filings" only where there is a "uniform percentage increase or decrease" applicable to premiums, it is nevertheless provided in Section 3937.03, Revised Code, that insurers shall file with the superintendent their rating plans and "every modification thereof" which they propose to use. Accordingly, when any rating plan, in any way at variance with that already filed, is proposed for use by an insurer, as to those risks to which the provisions of Chapter 3937., Revised Code, are applicable, it would become necessary to file it with the superintendent as a "modification" under this section even though it is not a "deviation" of the sort contemplated under Section 3937.06, Revised Code.

The questions here to be resolved are, therefore, whether the plan in question is a "deviation" within the meaning of Section 3935.07, Revised Code, or a "modification" of an existing rating plan within the meaning of Section 3937.03, Revised Code.

A substantially identical question was considered by one of my predecessors in Opinion No. 4495, Opinions of the Attorney General for 1941, page 902. The initial paragraph of the syllabus in that case reads:

> "1. A fire insurance company engaged in the business of insuring property in Ohio against loss or damage by fire, which is a member of a rating bureau, the rules of which bureau provide for the payment of premiums at the inception date of the policy and do not provide for the payment of premium in installments during the term of the policy, may put into effect in this State a plan whereby it collects premiums on policies insuring against such risks where the total of such installment premiums at all times equals or is more than the short rate earned premium for the time such policy has been in effect, provided such company files notice of such plan with the Superintendent of Insurance and the rating bureau of which it is a member pursuant to the provisions of Section 9592-9, General Code. * * *"

The rating plan under study in the 1941 opinion may be adequately described by the following language in the query to which such ruling was responsive:

> "* * * May such authorized fire insurance company, in addition to issuing fire insurance policies for one year at the annual rates and policies for a term of years at reduced multiples of the annual rates, as provided for by the rules and rates of the rating bureau of which the company is a member, issue fire insurance policies in this state with provision therein for payment of the premium in installments, taking a note for the unpaid installments after deduction of the down payment and charging simple interest at the rate of 6% on the unpaid balance of the premium, or would this be contrary to the so-called rating bureau act with particular reference to Sections 9592-8, 9592-12, O.G.C., or the principles as announced in General Insurance Co. v. Bowen, 130 O.S. 82, or any other law, when there are no provisions in the rules and rates of said provisions in the rules and rates of said rating bureau for such installment collection and interest charge?
>
> "In connection with the plan, the following is the proposed form of endorsement to be attached to policies providing for installment collection:
>
> " 'Installment Premium-Payment Endorsement
>
> "In consideration of the privilege of paying a portion of the premium for this policy in installments under a signed premium note, the named insured agrees that default in the payment of any installment specified in said note shall be deemed the named insured's request for immediate cancellation of this policy.

"All other terms and conditions of the policy not in conflict herewith remain unchanged.

"Attached to and forming a part of Policy No. ..... of the.....Insurance Company of ....., Ohio. Issued at its..... Agency.

"Date.....

In connection with the proposed plan, the following is the form of note:

"Premium Note

"Date..... Place.....
No..... $.....

"For value received, I, we, or either of us, promise to pay to the order of the.....Insurance Company of ....., Ohio $..... with interest from date at the rate of .....% per annum in lawful money of the United States at its office in ....., Ohio, as follows:

"Policy Number: .....

Policy Term: .....

"Total Policy Premium			Total Amount due	
"Cash Down Payment			Number of Installments	
"Deferred Balance			Amount of Each	
"Interest (at 6%)			Installment Due Dates	

"As collateral security for the payment of this note, the makers hereof hereby assign to the said company so much of the proceeds of any loss which may become payable under the policy, or, so much of any dividend declared on it, as may be necessary to pay in full any amount remaining due on this note at the time of such loss or declaration of dividend.

"It is understood and agreed that default in the payment of any installment provided for by this note shall be construed as a request by the makers hereof to immediately cancel the insurance policy described herein. Time is of the essence of this agreement.

"The makers hereof are privileged to pay any balance due in full on any installment date. If paid in full, the interest charge will be adjusted for the period of time during which installment payments were being made.' * * *"

The reasoning of the writer of such opinion is evident from the following language used, pp. 909, 910:

> "* * * As has been noted heretofore, courts generally do not regard the imposition of an additional charge by a public service corporation because of failure to pay a bill promptly as discriminatory, nor, on the other hand, is the practice of allowing a discount for prompt payment condemned. There does not appear to be any reported judicial decisions in Ohio touching this question, but the Public Utilities Commission has approved this principle in Re Van Wert Home Telephone Company (1931), O.P.U.C.R., 46, and Re Citizens Telephone Company (1931), O.P.U.C.R., 11. Since it is a well established principle of law with respect to public service corporations that they may not unjustly discriminate in their charges, that is to say, they may not charge more or less than they collected from others for a like and contemporaneous service *under similar circumstances and conditions,* the imposition of such extra charge or the allowance of such discount must be regarded as the fixing of an alternative rate available to such persons as may desire to take advantage of the terms thereof. In other words, the courts of other states and our Public Utilities Commission have regarded the time of payment as a part of the rate schedule to be charged for the service rendered.
>
> "An insurance company is not a public service corporation but the business of insurance is affected with the public interest and, in so far as your question is concerned with respect to rates, the same legal principle should govern. The rules of the rating bureau *do not provide for the payment of premiums other than at the inception date of the policy* and, consequently, I am of the opinion that the proposed plan of monthly installment payment of fire insurance premiums should be regarded as a *deviation from the schedule of rates prescribed* by the rating bureau. Such deviation can be legally effected only if notice thereof is given pursuant to the provisions of Section 9592-9, General Code. * * *" (Emphasis added)

As indicated above in the case there under study, there was (1) an "installment premium-payment" provision endorsed on the policy providing expressly for immediate cancellation of the policy in the event of default of an installment payment, and (2) a similar provision in the premium note. This is not the case in the plan here under study. Counsel for the insurer here involved have stated the points of variance between (1) their client's proposed plan and (2) the usual installment premium-payment plan as follows:

> "(a) Under the Travelers Plan there is no change or difference in the policy premium from that required for a policy

written on an annual or three-year term basis. Under an installment premium payment plan the policy premium is changed in accordance with the requirements of the installment premium payment plan.

"(b) Under the Travelers Plan there is no endorsement on or attached to the policy or any amendment of any of the policy provisions. Under an installment premium payment plan the policy must be endorsed to record the amendment to the policy made by the installment premium payment plan.

"(c) Under the Travelers Plan the insured is required to sign a promissory note. This is wholly separate and apart from the policy itself. Under an installment premium plan as such, the insured does not sign a promissory note wholly separate and apart from the policy.

"(d) Under the Travelers Plan the down payment and the promissory note are accepted in total payment of the premium. Under an installment premium payment plan there is no total payment of the premium until all of the premium installments have been paid.

"(e) Under the Travelers Plan payments after the down payment are made on promissory notes. They are not made on the policy premium. Under an installment premium payment plan, interim or periodic payments are premium payments.

"(f) Under the Travelers Plan the Company may not cancel the policy for nonpayment of premium after acceptance of the down payment and the promissory note. Under an installment premium payment plan a company may cancel for nonpayment of premium of any installment premium. If there is a default in payment of the note installments, under the Travelers Plan, the Company may protect its note account by electing to cancel the financed policy under the general cancellation right (for any cause or for no cause) contained in the policy, thereby permitting a reduction of the balance due under the note by the amount of the unearned premium due under the policy, the unearned premium being available for such application through an assignment thereof contained in the promissory notes.

"(g) Under the Travelers Plan the interest charge on the promissory notes is accounted for on the company's books as investment income and the expenses of operating the Plan are charged to investment expense. Under an installment premium payment plan, the installment premium charge is accounted for on the company's books as premium income and the expenses of operating the plan are charged to underwriting expense."

The note proposed to be used in the instant case bears the usual statement of non-negotiability, and otherwise reads in pertinent part:

"FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the order of THE TRAVELERS INDEMNITY COMPANY the amount stated in the 'Totals' space of Column F of the Automobile Policy Schedule, at the times and in the amounts provided for in the Schedule of Payments.

"The undersigned hereby assign to The Travelers Indemnity Company as security for the total amount payable hereunder any and all return premiums which become due under the policies set forth in the Automobile Policy Schedule. It is agreed that any sums received by the Company under this assignment shall be applied to reduce the unpaid balance due hereunder by subtracting the pro-rated amount of such sums from each payment remaining to be paid hereunder; the undersigned to continue liable for any indebtedness remaining, the excess, if any, over the balance due to be remitted by the Company to the undersigned.

"The undersigned agree not to assign any policy designated in the Automobile Policy Schedule or any interest therein, except for interests assigned to mortgagees or loss payees, without first paying the balance due hereunder. The undersigned agree that any such assignment without payment of such balance or failure to make any payment within five (5) days after the due date constitutes a default hereunder, and that upon the happening of any default, the entire unpaid balance due hereunder shall immediately become due and payable without notice or demand."

In view of (1) the non-negotiability of the note, of (2) the provision in the note assigning unearned premium under the policy as security for the note, of (3) the general cancellation right in the policy which the company may exercise for any cause, or for no cause, and particularly of (4) the authority of the company, described in paragraph (f) of company counsel's statement quoted above, to "protect its note account" by cancellation of the policy "financed" thereby, I am impelled to the conclusion that the plan here differs from that under study in the 1941 opinion, *supra,* only in a mere technical sense and not in any substantial way.

For example, the point is made (1) that the note and cash down payment are applied *"in total payment* of the premium," (2) that the insured's obligation to the insurer is thus based on the note and not on the policy, and (3) that the interest is an incident of the note and is not premium, so that the rating plan is thus unaffected. If we were dealing with a negotiable note which was sold by the company under such a plan that the company was without power to protect the holder of the note by a policy cancellation, this argument could be given some weight. It is my view, however, that the policy assignment to secure the note, considered in

relation to the power (whatever the practice be) of the company to cancel for the protection of its note account, reveals the plan as providing one integral contract between the parties rather than two separate and distinct agreements.

In the instant case, as in that involved in the 1941 opinion, the object and purpose of each installment payment is the same, *viz.,* to keep the insurance contract in force.

In both cases there is a debtor-creditor relationship evidenced by a written contract, in the earlier case evidenced by a note and by the endorsed policy which was delivered to and accepted by the insured, and in the instant case by the note secured by an assignment of the policy.

In neither case is there a total *payment* of the premium. A promissory note, especially one which is non-negotiable, is precisely what it purports to be, *viz.,* a *promise* to pay; and I do not consider that the fact that such promise is evidenced by a note rather than the policy itself, where such note is non-negotiable, can have the effect of changing the promise to pay a premium on a policy to a promise to pay something other than such premium. The variance in such case is between tweedledum and tweedledee, a technical distinction without a substantial difference; and this suggests that the plan represents a mere technical device employed to avoid the force of the rate regulatory statutes.

Here I should emphasize the significance to be attached to the features of non-negotiability of the note. If we were concerned with a negotiable instrument, which is actually sold to a third party under such an arrangement that the insurer has no financial interest in protecting the holder of such instrument against default, then I should be inclined to regard the delivery of such note as an actual payment of the premium; and, of course, the same would be true where the loan is made directly to the insured by such third party. In such case, all parties would have wholly separated interests, whereas in the instant case the insured faces the constant threat, because of the dual interest of the insurer, of cancellation of the policy in the event of default on the note.

In 3, Couch, Cyclopedia of Insurance Law, page 2118, Section 654, it is said:

> "Whether or not, and to what extent a note given for a premium constitutes payment, involves many factors, including acceptance, absolute or conditional, custom and usage, waiver and

estoppel, the authority of the insurer's agent acting with respect thereto, ratification, etc., varying according to the circumstances of each case. Primarily, it may be stated generally that the *intention of the parties, evidenced by the terms of the contract, and such explanatory circumstances as are properly relevant and admissible,* viewed in the light of the applicable rules of construction, *must govern.* Thus, it is said that the payment of a premium by note may be either absolute or conditional, depending on the intention of the parties at the time of its execution, and, if absolute, the insurer accepts the liability of the party executing the note in satisfaction of the premium; but, if conditional, the insurer, in case of non-payment, may resort to its original right to demand payment of the premium; also, that whether a note was taken as an absolute and unconditional payment of premium, or as indicating a mere extension of time, is a question of fact to be determined by the provisions of the note and the attending circumstances. * * *" (Emphasis added)

In the case at hand, we have noted the power of the insurer under the terms of the policy to cancel in order to protect its note account. We may readily suppose that in actual practice this power would regularly be exercised with promptness and certainty; and such an attitude on the part of the insurer would strongly suggest that it is *not* the insurer's intent that the giving of the note is to constitute actual payment of the premium.

For these reasons, therefore, it is my view that the plan in question constitutes a mere formal technical device which does not differ in substance from an installment premium-payment plan incorporated in the terms of a policy contract; and I conclude that it is in fact, within the meaning of Section 3935.07, Revised Code, or within the meaning of Section 3937.03, Revised Code, as the case may be, a deviation from or a modification of a rating plan which provides only for a rate of premium to be paid in full in cash at the inception of the policy contract.

Coming now to your second question, counsel for the company here concerned have invited attention to the following provisions in Section 3929.30, Revised Code:

"The president or the vice-president and the secretary of each insurance company organized under the laws of this or any other state and doing business in this state, annually, on the first day of January or within sixty days thereafter, shall prepare, under oath, and deposit in the office of the superintendent of insurance a statement of the condition of such company on the next preceding thirty-first day of December, exhibiting the following facts and items in the following form:

"* * *

"(A) (11) The amount of premium notes or contingent liabilities on which policies are issued;

"(A) (12) The amount and description of all other assets; * * *"

The provisions, it will be noted, apply to both domestic and foreign insurers, and they are set out in substantially identical language in former Section 9590, General Code, in effect at the date of the 1941 Opinion, *supra*. In discussing the classification of such notes as investments the writer said:

"You further ask whether the receipt of notes by an Ohio fire insurance company would be prohibited by law for the reason that such premium notes would be investments not authorized by Sections 9607-11, 9518 and 9519, General Code. While it is true that premium notes are not enumerated in these sections as investments which fire insurance companies are authorized to make, I do not believe that it was the intent of the General Assembly by enacting these sections to prohibit a fire insurance company from taking premium notes. Your attention is invited to the provisions of Sections 9575, 9577, 9578, 9579, 9580 and 9581, General Code. In each of these sections, except Section 9578, General Code, the General Assembly has used the expression 'premium notes' and the six sections in their entirety recognize that premium notes may be taken in payment of fire insurance policies and regulate the method of carrying on such transactions. In this connection, it is interesting to note that Section 9581, General Code, provides that any such premium note must contain on its face the following words 'it is hereby understood and agreed that this note is not transferable.' The form of note proposed to be used by the company in question does not contain this language.

"Since the General Assembly has by the enactment of these sections recognized the legality of the practice of taking notes in payment of the premium on fire insurance policies and has regulated such practice, it must not have intended that such notes should be regarded as investments within the meaning of the sections to which you refer.

"These same sections to which I have referred and which recognize the legality of premium notes are also applicable to insurance companies organized under the laws of another state or a foreign country which do business in this state and for the same reason that I do not regard such notes as investments I would not regard the taking thereof by such foreign or alien company as engaging in the banking business. * * *"

Here it will be seen that the writer gave no heed to the idea that everything which is reported as an asset under the provisions of former Section 9590, General Code, must be regarded as an investment, either

in the case of a domestic or a foreign insurer; and I agree that the face value of premium notes should not be so regarded, nor treated as admitted assets.

Your second question is limited, however, to that amount of such notes as is "not in excess of the unearned premiums on the policies for which the notes are taken in payment of part of the premium." As I understand the operation of the plan in question, the face of such a note, when executed, does not exceed such unearned premium, and if the company should regularly act promutly to "protect its note account" by effecting a cancellation of the policy upon default of a payment on the note, then the amounts due on such notes would never exceed the amount of the unearned premium. This suggests your thought that such portion of such notes as *does* exceed the unearned premium, i.e., where the company fails promptly to effect a policy cancellation so that premium has been earned in excess of cash payments, could not be considered an admitted asset. I concur in this view, but I agree also with the writer of the 1941 opinion, *supra,* that no part of such notes can be considered as investments, and hence as admitted assets.

In passing, we may note that even if such notes "not in excess of the unearned premiums" were to be classed as admitted assets, the financial statement of the company would not be substantially affected. This is true for the reason that if the notes are so admitted, on the theory that they represent an actual premium *payment,* then it would be necessary, in the company's statement, to report under Division (C) (7), of Section 3929.30, Revised Code, a substantially equal amount as a liability, *i.e.* the *pro rata* of unearned premiums. This being so, it can be seen that the matter is not one of compelling importance, although this aspect of it serves further to reveal the plan as a mere formal technical device to avoid the force of the rating statutes.

As to your third question, since I have already concluded that the note is not an investment but is only a substitute for a deferred premium payment plan, it follows that the interest thereon should be regarded as a part of the premium, added to the regular rate thereof as a consideration for acceptance of cash payment on a deferred basis, and should be so reported as provided in Section 5729.02, Revised Code.

In specific answer to your inquiry, it is my opinion:

1. A plan whereby an insurance company, authorized by a rating plan filed with the superintendent of insurance to issue policies of fire or

casualty insurance at particular rates payable in advance, issues such policies with the premium (1) paid partly in cash in advance, and (2) with the balance covered by a non-negotiable promissory note, secured by the assignment unearned premiums under such policy, with 5% simple interest payable in monthly installments, and where such policy contains a general cancellation provision under which the insurer may cancel such policy upon default of payment of any installment on such note, is a deviation from such rating plan within the meaning of Section 3935.07, Revised Code, or is a modification of such rating plan within the meaning of Section 3937.03, Revised Code, as the case may be.

2. The unpaid balance on such a promissory note, not past due and not in excess of the unearned premium on the policy with respect to which such note is given, should not be deemed an admitted asset of a domestic insrance company under the provisions of Section 3925.08, Revised Code, nor of a foreign insurance company under the provisions of Section 3927.08, Revised Code.

3. The amounts received by the insurer by way of interest on such notes should be reported as payments of premiums in the tax return made by the insurance company as provided in Chapter 5729., Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General