

## **Declaratory Ruling 91-11498-M**

### **Soliciting insurance by offering to rebate premiums in another state**

March 27, 1991

#### **I. BACKGROUND**

Peter C. Katt is a Michigan life insurance counselor and life insurance agent. He filed a Request for a Declaratory Ruling (the Request), which is dated August 28, 1990. It is attached and incorporated by reference. Detailed facts and the full text of applicable statutes are set forth in the Request.

Mr. Katt asks the Commissioner of Insurance (Commissioner) to declare whether he may, consistent with statutory law, communicate such facts as follows to clients, potential clients, and others:

1. Rebating of commissions is lawful in Florida and California.
2. He is licensed in Florida as a non-resident agent.
3. He is willing to sell life insurance policies in Florida to anyone who is interested in purchasing one there.
4. He will rebate to anyone purchasing a life insurance policy from him in Florida 100 percent of any commissions to which he is entitled under any policy and will charge the client an hourly rate for his time, plus expenses for going to Florida.

Due to their interest in the matter, the Commissioner gave state agent organizations an opportunity to comment upon the Request. On November 6, 1990, the Commissioner received the response of the Independent Insurance Agents of Michigan, the Michigan Association of Professional Insurance Agents, and the Michigan State Association of Life Underwriters. They argue that the proposed communications described by Mr. Katt would be in violation of the anti-rebate laws.

Declaratory rulings with respect to the applicability of statutes are governed by Section 63 of the Administrative Procedures Act of 1969, as amended (APA), MCLA 24.263; MSA 3.560(163). That section provides:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency . . .

Mr. Katt qualifies as an interested person under this section. If allowed to do so, the communications he describes will be an integral part of the way he does business. He does not raise hypothetical issues; he has described communications that he would make

in the future if they are determined to be legal. He has asked how Sections 2024, 2066, and 2070 of the Insurance Code of 1956, as amended (Code), MCLA 500.2024; MSA 24.12024, MCLA 500.2066; MSA 24.12066, and MCLA 500.2070; MSA 24.12070, which prohibit rebating (the anti-rebate laws), apply to these communications. He has also identified Sections 402, 402a, and 402b of the Code, MCLA 500.402; MSA 24.1402, MCLA 500.402a; MSA 24.1402a, and MCLA 500.402b; MSA 24.1402b, which pertain to the licensure of insurers (the insurer licensing laws), as possibly relevant to the inquiry.

## II. ISSUES

The principal issues presented by this Request for Declaratory Ruling are:

1. May an agent or counselor, consistent with the anti-rebate laws, offer in Michigan to give rebates on policies written in Florida as an inducement to insurance.
2. Do the insurer licensing laws apply to this conduct?

## III. ANALYSIS

Mr. Katt does not propose to give rebates in Michigan. He plans, instead, to solicit the sale of insurance in Michigan by an offer to rebate premiums in Florida. An examination of the anti-rebate laws shows there is a critical difference between solicitation, which is prohibited, and providing information, which is not.

Section 2024 prohibits " . . . offering to . . . give . . . as inducement to . . . insurance . . . any rebate of premiums . . . not specified in the contract . . . " Section 2066 provides essentially the same. Section 2070 prohibits an insured from receiving rebates.

Sections 2024 and 2066 prohibit not only the giving of a rebate in Michigan but the offering to give a rebate as an inducement to insurance. Thus, while Mr. Katt is free to disseminate information as to the legality of rebating in Florida, he cannot give that information in a context where it is designed to induce the sale of insurance. Given this general framework, how the anti-rebate laws apply to specific, proposed communications is as follows, tracking to the numbered paragraphs on pages 10 to 14 of the Request:

22. To the extent the consumer guide is distributed in Michigan, it would lead to a violation of the anti-rebate laws because it offers rebates as an inducement to insurance. If Mr. Katt were to state in the publication that he is not allowed to make such arrangements in Michigan due to the anti-rebate laws, the problem would be obviated.

23. To the extent that the AAI Journal is distributed to Michigan residents, it would lead to a violation of the anti-rebate statutes because it offers rebates as an inducement to insurance. If Mr. Katt were to state in the publication that he is not allowed to make such arrangements in Michigan due to the anti-rebate laws, the problem would be eliminated.

24. Where speeches are delivered in Michigan and contain the information set forth in paragraph 22, they would violate the anti-rebate laws. Again, if Mr. Katt were to state in his speeches that he is not allowed to make such arrangements in Michigan due to the anti-rebate laws, the problem would be removed.

25. Responding to inquiries from the media would not constitute the solicitation of insurance. However, to reply accurately to the media, Mr. Katt would need to indicate that he is not allowed to make such arrangements in Michigan for the reasons discussed above.

26. (1) Yes. However, a natural and accurate additional statement would be that he is not allowed to make such arrangements in Michigan.

(2) No, for reasons discussed above.

(3) No answer needed, since the preceding answer was "no."

(4) (a) No, since Mr. Katt would be making an offer of rebates, albeit on behalf of another, as an inducement to insurance. Furthermore, giving the Florida agent's telephone number is apparently to further that agent's offering of rebates in Michigan. Since that agent's doing so would be illegal, this would raise an issue as to whether Mr. Katt is failing to maintain licensure standards of good faith, honesty, and trustworthiness set forth in Section 1204(4) of the Code, MCLA 500.1204(4); MSA 24.11204(4). Since rebating is a criminal offense, Mr. Katt's participation may present issues of conspiracy which are, however, beyond the scope of the Code and this declaratory ruling.

(b) No. Disclosing the amount of the rebate would be specific information, likely related to a particular policy, and would constitute inducing the sale of that policy.

27. (1) Yes. This is general information not oriented toward inducing the sale of any particular contracts.

(2) No. The information on what the client would pay that agent plus what rebates the client would receive amounts to solicitation on behalf of the Florida agent.

(3) No. See above.

Mr. Katt also identified the insurer licensing laws as possibly applicable to his solicitation activities. Section 402 of the Code provides:

No person shall act as an insurer and no insurer shall issue any policy or otherwise transact insurance in this state except as authorized by a subsisting certificate of authority granted to it by the commissioner pursuant to this code.

Section 402a provides:

The following constitute transactions of insurance in this state, whether effected by mail or otherwise:

- (1) The issuance or delivery of contracts of insurance to persons resident in this state, or
- (2) The solicitation of applications for such contracts, or
- (3) The collection of premiums, membership fees, assessments or other consideration for such contracts, or
- (4) The doing or proposing to do any act in substance equivalent to any of the foregoing.

Section 402b provides:

The following do not constitute transactions of insurance in this state within the meaning of sections 402 and 402a:

- (g) Transaction of insurance independently procured through negotiations occurring entirely outside of this state.

These statutory sections establish that insurers transacting insurance in Michigan must have certificates of authority and, for that purpose, define what constitutes transactions of insurance. An insurer selling policies through Mr. Katt would need to be licensed by the Commissioner because several activities would take place in Michigan by mail, by telephone, or in person. Solicitation for applications of life insurance would routinely occur by telephone or in person, as discussed above. Some negotiations would probably take place by telephone or in person.

Policies would be issued or delivered to Michigan residents. Renewal premiums would likely be mailed by Michigan residents to the insurer.

Not only would an insurer selling policies through Mr. Katt's Michigan solicitations need to be licensed, it would also be subject to the anti-rebate laws. Section 2066(1) begins, "No insurer . . . and no insurance agent . . . shall offer . . ." rebates. Thus, the insurer could not lawfully permit Mr. Katt to engage in Michigan solicitations on its behalf that involve rebating.

In the discussion portion of the Request, Mr. Katt discusses *Bigelow v Virginia*, 421 U.S. 809 (1975), drawing upon this case in support of his argument that his proposed communications are protected by the First Amendment. Constitutional issues are beyond the purview of the Commissioner and, in any event, are specifically beyond the scope of a declaratory ruling under Section 63 of the APA. However, it should be emphasized that, as discussed above, the giving of information as to the legality of rebates in Florida is not prohibited by the anti-rebate laws. They prohibit offering rebates in Michigan as an inducement to insurance. Also, it should be noted that the solicitation in Michigan of insurance by rebates, and the culmination of the rebating in Florida, has a financial impact on Michigan residents.

As discussed in the Opinion and Order by the Honorable Lawrence M. Glazer in *Katt v Commissioner of Insurance*, File No. 87-60123-CZ (July 19, 1990), a principal justification for the anti-rebate laws is to prevent companies from having insufficient assets to pay claims. If insurance is solicited in Michigan based upon rebates, Michigan residents will be subject to potential, negative financial repercussions long after they have received their rebates in Florida.

An additional financial consideration is found in the Life and Health Insurance Guaranty Association Act, contained in Chapter 77 of the Code, MCLA 500.7701 et seq.; MSA 24.17701 et seq. In the event of the financial failure of an insurer that is a member of the Guaranty Association, the losses are borne by all members of the Association. These losses are ultimately borne, in part, by the general public since insurers are able to obtain tax credits for amounts paid to the Guaranty Association pursuant to Section 22c of the Single Business Tax Act, MCLA 208.22c; MSA 7.558(22c).

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the foregoing considerations, it is FOUND and CONCLUDED that:

1. The Commissioner has authority to issue this declaratory ruling pursuant to Section 63 of the APA.
2. Peter C. Katt is a Michigan life insurance counselor and life insurance agent. If lawful, Mr. Katt wishes to communicate to clients, potential clients, and others the following:
  - a. Rebating of commissions is lawful in Florida and California.
  - b. He is licensed in Florida as a nonresident agent.
  - c. He is willing to sell life insurance policies in Florida to anyone who is interested in purchasing one there.
  - d. He will rebate to anyone purchasing a life insurance policy from him in Florida 100 percent of any commissions to which he is entitled under any

policy and will charge the client an hourly rate for his time, plus expenses for going to Florida.

3. Section 2024 of the Code prohibits the "offering to . . . give . . . as inducement to . . . insurance . . . any rebate of premiums . . . not specified in the contract." Section 2026 provides essentially the same. Section 2070 prohibits an insured from receiving rebates.
4. With a few exceptions identified above, the proposed communications set forth by Mr. Katt would violate the rebate laws. By these communications, he would be offering to give, as inducement to life insurance contracts, rebates of premiums payable on the contracts that are not specified in the contracts.
5. Communications that merely disclose that rebating is lawful in Florida and that are not made as an inducement to insurance do not violate the anti-rebate laws.
6. The insurer licensing laws require an insurer to be licensed in Michigan if it solicits business in Michigan. The anti-rebate laws prohibit an insurer as well as its agent from soliciting insurance in Michigan by offering rebates in Florida.

## **V. RULING**

I therefore enter this declaratory ruling that:

1. An agent or counselor may not, consistent with the anti-rebate laws, offer in Michigan to give a rebate in Florida as an inducement to insurance. With a few exceptions noted above, the proposed communications described by Mr. Katt are not consistent with the anti-rebate laws.
2. The insurer licensing laws require an insurer to be licensed in Michigan if it solicits business in Michigan. The anti-rebate laws prohibit an insurer as well as its agent from soliciting insurance in Michigan by offering rebates in Florida.

This ruling is limited to facts that were presented by Mr. Katt and the statutory sections identified by Mr. Katt.

The Commissioner specifically retains jurisdiction of the matters contained herein and the authority to issue such further ruling or rulings as he shall deem just, necessary, and appropriate.

D. A. D'Annunzio  
Acting Commissioner of Insurance