

N.D.A.G. Letter to Tennefos (June 21, 1990)

June 21, 1990

Honorable Jens Tennefos
State Senator
714 19th Avenue South
Fargo, ND 58103

Dear Senator Tennefos:

Thank you for your March 27, 1990, letter requesting an opinion on the constitutionality of N.D.C.C. § 26.1-25-16. This statute prohibits the rebating of the premium for any insurance policy except as in accordance with N.D.C.C. ch. 26.1-25.

I delayed responding to you earlier because it came to my attention in late March that the Commissioner of Insurance was engaged in an exhaustive investigation of possible violations of N.D.C.C. §§ 26.1-25-16, 26.1-04-05, 26.1-04-06, and 26.1-04-16. All of these statutes basically deal with the illegal practice of what is commonly known as "rebating." I have recently been informed that an administrative complaint has been prepared by the Insurance Department for service upon one or more insurance agents alleging violations of the above-referenced state statutes.

Because this matter is being handled by the North Dakota Insurance Department, I requested Assistant Attorney General Gregory B. Stites to contact you with some of the specifics of their case and its relationship to the rebating statutes. I understand that you have now discussed this matter with him over the telephone.

All 50 states have statutes or regulations prohibiting rebating in some form. Accordingly, I am not of the opinion that our statutes are either unduly restrictive or out of step with laws in other jurisdictions. I believe our statutes are appropriate and constitutional. I am enclosing a photocopy of an article entitled "Rebating Laws" published by the National Association of Life Underwriters. The article describes some of the recent litigation surrounding the nation's anti-rebate laws and addresses some of the evils associated with rebating.

North Dakota law does not prohibit rebating in all instances. However, any valuable consideration or inducement to purchase given to a policyholder (i.e., rebate) must be specified in the policy. The specification must be in accordance with the filing made with the Insurance Department pursuant to the provisions of the laws regulating insurance rates. (See N.D.C.C. § 26.1-04-06). Because the insurance industry is highly regulated, it is manifestly important for the state to be aware of any practice or scheme which would affect the practice of selling insurance.

I trust you will find these comments helpful. Should you have any additional questions, do

not hesitate in contacting me at your convenience.

Sincerely,

Nicholas J. Spaeth

cv

cc: Commissioner Earl Pomeroy