

1977 S.C. Op. Atty. Gen. 125 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-148, 1977 WL 24490

Office of the Attorney General

State of South Carolina

Opinion No. 77-148

MAY 11, 1977

*1 The Chief Insurance Commissioner must approve any policyholder assessment declared by the Joint Underwriting Association.

TO: John W. Lindsay
Chief Insurance Commissioner
State of South Carolina Department of Insurance
Post Office Box 4067
Columbia, South Carolina 29240

QUESTION

Does Section 11 of Act No. 306 of 1975 (p.823 at p.828) permit the Joint Underwriting Association to declare a policyholder assessment without the approval of the Chief Insurance Commissioner?

AUTHORITIES

Act No. 306 of 1975 (p. 823);

R5-75 of Department of Insurance Regulations.

DISCUSSION

Section 11 of Act No. 306 of 1975 reads as follows:

Section 11. Deficits to be recouped.—Any deficit sustained by the association in any year shall be recouped, pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:

- (1) An assessment upon the policyholders, such assessment not to exceed one additional premium at the then current rate;
- (2) A rate increase applicable prospectively.

This Section clearly indicates that either an assessment or a rate increase is to be accomplished ‘ . . . pursuant to the plan of operation . . . ’ Section 4 of this Act requires that the Commissioner promulgate such a plan of operation.

The plan of operation promulgated by the Commissioner is contained in R5-75 of the Department of Insurance Regulations. Section 6(a) of the plan empowers the Board of Directors of the Joint Underwriting Association, ‘ . . . subject to the approval of the Commissioner, to invest, borrow, and disburse funds, budget expenses, levy assessments, cede and assume reinsurance, and perform all other duties provided in this Plan of Operation or which are necessary or appropriate to the proper administration of the Plan.’ (Emphasis Supplied). The phrase ‘levy assessments’ includes both assessments on individual policyholders and assessments on members of the Joint Underwriting Association. The Plan of Operation as promulgated by the Commissioner is

consistent with Section 11 of the Act. Section 11 permits the assessment of policyholders as one of two methods for recoupment of a deficit. This Section also provides that both methods of recoupment are to be accomplished pursuant to the plan of operation. Therefore, the procedure dictated by R5-75 must be followed before any policyholders are assessed.

CONCLUSION

It is the opinion of this Office that any assessment made upon policyholders by the Board of the Joint Underwriting Association must be approved by the Chief Insurance Commissioner. Such an assessment is authorized under Section 11 of Act No. 306 of 1975, which permits assessments pursuant to the plan of operation. The plan of operation promulgated by the Chief Insurance Commissioner requires said Commissioner's approval on any such assessment, and any assessment without the Commissioner's approval would be invalid.

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