



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

The Office of General Counsel issued the following opinion on May 7, 2001 representing the position of the New York State Insurance Department.

Re: Agent Commissions When the Agent's License Expires.

Question Presented:

May an insurance company legally compensate an agent entitled to commissions on group policies after the agent's termination date when the agent's license has expired and has not been renewed?

Conclusion:

Yes, an insurance company may pay commissions owed to an agent after the agent's termination date when the agent's license has expired and has not been renewed. An agent's commission vests at the time the licensed agent places the policy. Therefore, the agent would be entitled to the commission as determined by the contract.

Facts:

A company currently pays a terminated agent commissions on group policies for two years after the agent's termination date. The inquirer questioned whether this company could legally compensate an agent who does not renew his or her license because the agent is working in another industry.

Analysis:

Sections 2114, 2115 and 2116 of the New York Insurance Law (McKinney 2000) prohibit payment of commissions or other compensation to someone acting as an agent or broker without a license. However, the Insurance Department has previously stated that an agent who is no longer licensed may be entitled to commissions for services performed when previously licensed, provided the employment contract allows for same. The above sections do not prohibit such payment. An agent has earned his commission in full when the policy has been issued and the premium paid. The fact that the agent was not licensed when some of the premium payments were made or when the commission was payable does not extinguish the agent's right to the commission that was earned while the agent was licensed.

For further information, you may contact Senior Attorney Kay Rahbar at the New York City office.