JOHN C. NEFF
COMMISSIONER

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
114 STATE OFFICE BLDG.
NASHVILLE 37219

BULLETIN

TO: All Insurers Doing Business in Tennessee

FROM: John C. Neff, Commissioner

SUBJECT: Insurance Activities of Unlicensed Agency Personnel

DATE: August 8, 1985

T.C.A. 56-6-102 provides in pertinent part:

> (1) INSURANCE AGENT. An insurance agent is an individual appointed by an insurer to solicit applications for a policy of insurance or to negotiate a policy of insurance on its behalf.
>
> An individual not duly licensed as an insurance agent or limited insurance representative, who solicits a policy of insurance on behalf of an insurer shall be an insurance agent within the intent of this Chapter...

T.C.A. 56-6-103 provides in pertinent part:

> License Required - (a) No person within this State should act as or hold himself out to be an insurance agent or limited insurance representative unless duly licensed.

It has come to the Department's attention that there is disagreement and uncertainty in the industry regarding proper interpretation of the above referenced statutes with regard to unlicensed agency personnel. While no hard and fast rules can be set forth which will apply to all situations, this Bulletin will attempt to set guidelines for proper conduct.

An understanding of the terms "solicit" and "negotiate" is important to understanding the extent to which unlicensed persons may participate in insurance transactions.

"To solicit" has been defined as to seek or try by persuasion; to ask, to request, plead or invite, e.g., to invite an individual to purchase an insurance contract.

"To negotiate" is to bring about mutual agreement, to transact business, to communicate with another so as to arrive at the settlement of some matter, to discuss or arrange a sale. "To negotiate" is to discuss and settle the terms, conditions, benefits, and rates of an insurance contract.

The Insurance Code requires a person to become licensed and hold company appointments in order to solicit or negotiate insurance contracts. The public policy behind the agent licensing statutes is to insure that insurance agents demonstrate competency through passing insurance examinations, and to create a formal agency relationship making the insurance company responsible for the acts of its duly appointed agents.

An unlicensed person can discuss insurance matters in general, with regard to both coverages and rates. However, if a general discussion develops into a "negotiation", as it almost certainly will if an unlicensed person does more than take information for an application, the matter should be turned over to a properly licensed agent for handling to its conclusion. Accordingly, an unlicensed person should not discuss particular coverages requiring explanation or negotiation, accept payments for coverage, or do anything which will bind an insurer or lead the applicant to believe that he or she is bound without dealing directly with a licensed agent in person or by telephone.

As stated previously, the Department can only give guidelines since the propriety of an unlicensed persons actions will depend upon the facts surrounding a specific case. Listed on the following page are some examples of insurance activities in which an unlicensed person may or may not engage. If you are in doubt as to the propriety of a particular action, you should contact the Department of Commerce and Insurance for guidance. To assure that there is always a properly licensed individual in an agency to assist the public, the Department urges companies to license at least one member of each agency's office personnel.

JCN/cmf

Attachment

AN UNLICENSED PERSON
(Employed by an Insurance Agent, Agency or Company)

MAY

Take factual information
for applications

Quote rates as general information

Receive requests for coverage for
transmittal to a licensed agent

Arrange appointments for a
licensed agent

Be remunerated on a "unit of time
or work" basis

MAY NOT

Counsel or advise what coverages to buy

Urge or advise insuring with any
particular company

Indicate that requested coverage is or
will be bound or issued

Bind coverage (this includes accepting
premium payments prior to the
binding of coverage by a
license agent)

Solicit additional business when
receiving payment

Solicit sales for agent over the
phone or otherwise

Be remunerated on a "commission
basis" i.e., contingent upon
the specific sale of insurance
or percentage of premium