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Re: Interpretive Opinion 03-14, License Requirement for Retail Cashiers that Facilitate the Purchase of Automobile Club Memberships

Dear Mr. Chandler,

The Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") is in receipt of your request for clarification on the license requirement to sell automobile club memberships, as required by Tennessee Code Annotated ("Tenn. Code Ann.") § 55-18-106. The Division is treating your inquiry as a request for an interpretive opinion under Tennessee Comprehensive Rules & Regulations ("Tenn. Comp. R & Regs.") 0780-01-77-.01.

Specifically, you have requested the Division to opine whether certain participation of a retail sales clerk and/or cashier would qualify as the "sale" of insurance; therefore, requiring the individual to obtain a license to sell automobile club memberships as required by Tenn. Code Ann. § 55-18-106.

The facts as understood by the Division are as follows:

Your client wishes to sell automobile club memberships in a retail setting. The memberships would be displayed on a store sales rack just as any other product or merchandise. Customers would walk into a large retail store and see the membership hanging on a sales rack. The customer could pick up the membership from the rack, take it to a register and/or cashier along with other merchandise selected, have it scanned, and pay for it through the cashier. The cashier would be trained not to answer any questions regarding the membership, but instead direct the customer to call the 1-800 telephone number on the back of the membership card for answers to any questions. In addition, the cashier would distribute an informational brochure with the

membership. The phone number provided on the card would connect directly to the automobile club. The cashier would not answer any questions nor give any descriptions or explanations as to the membership. Further, the cashier would not receive a commission for the sale of the membership. The cashiers involved in the automobile club purchase are strictly participating in the sale of the product by providing the administrative task of ringing up the product for final purchase. This is the equivalent of an administrative assistant drafting a receipt for an insurance agent's policy sale to a customer.

Tenn. Code Ann. § 55-18-106 provides:

> Before any agent or representative may *sell*, solicit, or negotiate membership in an automobile club or association in Tennessee, the agent or representative shall first apply to the commissioner for a license, and the commissioner shall have the full power and authority to issue the license upon proof satisfactory to the commissioner that the person is capable of soliciting automobile club or association memberships, and is of good moral character and recommended by the club or association on behalf of which the membership solicitations are made. . . . [Emphasis added].

Tenn. Code Ann. §55-18-101 *et seq.* does not provide any guidance on the definition of the term "sell" which would be relevant to determining what activities require a license. However, the language of the statute stresses the need to apply for a license so that the Commissioner may determine whether "the person is capable of soliciting automobile club or association memberships." This language implies that the legislative intent of the statute is to ensure competency of those soliciting sales from the public and those substantively involved in the sales transaction. Tennessee case law provides that interpretations of statutory language must "give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." John Houghton v. Aramark Educational Resources, Inc., 90 S.W. 3d 676, 678 (Tenn. 2002). The correct interpretation of the term "sell" should give effect to the overall intent of the statute.

In addition, while Tenn. Code Ann. § 55-18-108 makes clear that automobile clubs and associations shall not be subject to other insurance regulatory laws, definitions found under similar insurance licensing statutes can provide guidance on the correct interpretation, since comparable regulated products also similarly contain an insurance component and are regulated by the same Agency.

The term "sell" is specifically defined under Tenn. Code Ann. § 56-6-102(16) of the Tennessee Insurance Producer Licensing Act ("Act") to mean: "to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company." Both this act and the automobile club consist of the same statutory purpose of regulating the sale of various insurance products, by licensing those individuals engaging in the business. The definition of "sell" provided in the Act is broadly worded to encompass most transactions. However, exceptions to the licensing requirement within the Act provide additional guidance as to the level of participation in insurance transactions that prompt the need for individuals to obtain a license. For example, Tenn. Code Ann. § 56-6-104 provides several exceptions to the insurance producer

license requirement. A commonality between some of these exceptions relates to employees participating in insurance in a purely administrative capacity. For example, Tenn. Code Ann. § 56-6-104(b)(1)(A) provides, in pertinent part, that an officer, director or employee of an insurance producer or insurance company does not need to be licensed for activities that are "executive, administrative, managerial, or clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance[.]" This exemption highlights the overall intent of insurance licensing requirements, to place requirements on those substantively involved in insurance business, distinct from employees making minor administrative contributions to help facilitate the transaction.

Based on the facts provided, the cashier involved in the automobile club membership sales transaction is in no way engaging in advisement or encouragement of the purchase, and is merely providing the administrative function of checking out a customer who has already decided to make the purchase. In addition, the cashier will not receive a commission nor any direct benefit from the sale. Due to the administrative nature of the cashier's role in the purchase of the automobile club membership, those individuals would not be required to obtain a license under Tenn. Code Ann. § 55-18-106.

Please note that that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter, and the position stated herein would be void. This letter expresses the Division's position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation relating to the interpretation of Tenn. Code Ann. § 55-8-106 and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Blank & Meenan, PA could result in a different conclusion than asserted herein.

If you have any further questions or concerns regarding this letter, please feel free to contact me at the above number.

Nancy S. Jones,
Deputy Commissioner and General Counsel

By:

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