



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

Eliot Spitzer
Governor

Eric R. Dinallo
Acting Superintendent

The Office of General Counsel issued the following opinion on March 12, 2007 representing the position of the New York State Insurance Department.

RE: Charitable Contribution Advertisement

QUESTION PRESENTED:

May an insurance agency advertise that it will donate a nominal sum to a charity every time the agency receives a call for an insurance quote?

CONCLUSION:

No. While an insurance agency may make charitable donations, it may not advertise that it will donate a sum to the charity every time it receives a call for an insurance quote. Charitable donations in the circumstances described below constitute an unlawful inducement of the sort that the Insurance Law proscribes.

FACTS:

The inquirer reports that it is a property/casualty insurance agent that would like to sponsor a local charity by purchasing a radio advertisement. The advertisement would state that for every caller who requests a property/casualty insurance quote, the agency would make a \$5 contribution to the charity. The inquirer declares that the contribution would not be contingent on the sale of insurance, and that any referral would not entail a discussion of specific policy terms and conditions. In addition, it claims that since it will be making the contribution at the time of the referral, and not after any insurance policy takes effect, its proposed plan is permissible under the Insurance Law. Finally, the inquirer states that no formal contract exists between it and the intended charitable recipient.

ANALYSIS:

Pursuant to New York Insurance Law § 2115 (McKinney 2006), upon which the inquirer relies, as well as Insurance Law §§ 2114 and 2116, only a licensed insurance agent or broker may be compensated for soliciting, negotiating or selling insurance as provided by Insurance Law § 2102 (McKinney 2006). However, a licensed agent or broker may compensate an unlicensed entity for a referral if: 1) the referral to the licensed agent or broker does not include a discussion of the insurance policy terms and conditions, and 2) the agent or broker does not base the referral fee upon the purchase of insurance (Ins. Law § 2115(a)(1)).

Under the facts that the inquirer presents, where parties interested in purchasing insurance are calling the agency directly after hearing a radio advertisement, there is, contrary to the inquirer's assertions, no referral. Therefore, the referral provisions of Insurance Law §§ 2114, 2115 and 2116 are inapplicable here. However, Insurance Law § 2324, which pertains to most property/casualty insurance agents and brokers, prohibits the offering of any rebates or inducements, either directly or indirectly, other than an article of merchandise not exceeding \$15 in value in connection with the sale of insurance, provided such rebate or inducement is not specified in the policy. Insurance Law § 2324(a) provides:

No authorized insurer, no licensed insurance agent, no licensed insurance broker, and no employee or other representative of any such insurer, agent or broker shall make, procure or negotiate any contract of insurance other than as plainly expressed in the policy or other written contract issued or to be issued as evidence thereof, or shall directly or indirectly, by giving or sharing a commission or in any manner whatsoever, pay or allow or offer to pay or allow to the insured or to any employee of the insured, either as an inducement to the making of insurance or after insurance has been effected, any rebate from the premium which is specified in the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or shall give or offer to give any valuable consideration or inducement of any kind, directly or indirectly, which is not specified in such policy or contract, other than any article of merchandise not exceeding fifteen dollars in value which shall have conspicuously stamped or printed thereon the advertisement of the insurer, agent or broker, or shall give, sell or purchase, or offer to give, sell or purchase, as an inducement to the making of such insurance or in connection therewith, any stock, bond or other securities or any dividends or profits accrued thereon, nor shall the insured, his agent or representative knowingly receive directly or indirectly, any such rebate or special favor or advantage, provided, however, a licensed insurance agent or a licensed insurance broker may retain the usual commission or underwriting fee on insurance placed on his own property or risks, if the aggregate of such commissions or underwriting fees will not exceed five percent of the total net commissions or underwriting fees received by such licensed insurance agent or insurance broker during the calendar year.

To advertise charitable contributions as an incentive for new insurance business constitutes an offer of an intangible benefit or inducement that violates Insurance Law §§ 2324 or 4224 (which pertains to life, accident and health insurance, and annuities). See General Counsel Opinion 11-03-12, dated March 17, 2000. However, since 2004, the Department's Office of General Counsel on at least three occasions has opined that a licensed insurance agent or broker may donate to a charitable organization a portion of commissions earned from the sale of insurance policies if: (1) prospective clients and insureds have no direct or indirect influence over which charities receive donations; (2) no donations are made in the name of an insured or prospective client or are otherwise made on behalf of an insured or prospective client; and (3) no applicable tax deductions for such charitable contributions, or any other benefits – whether tangible or intangible, direct or indirect – stemming from such donations, inure to an insured or prospective client. See General Counsel Opinions 04-03-02, dated March 3, 2004; 04-11-12, dated November 16, 2004; and 06-06-11, dated June 28, 2006. However, upon further reflection, even that reasoning is suspect, because the very nature of the proposal confers on a prospective insured an “indirect,” “intangible” benefit. Because the governing statutes do not provide for a charitable donation exception, those opinions of the Department's Office of General Counsel that are contrary to the analysis set forth herein are hereby overruled and should not be followed. Of course, nothing precludes the agent or broker from making charitable contributions so long as the advertising of a charitable contribution as an incentive

for new insurance business does not constitute an improper inducement in violation of Insurance Law § 2324.

For further information you may contact Assistant Attorney Sapna S. Maloor at the New York City Office.