

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Office Insurance ("the Office") on the specified issue. The Advisory Opinion is not legally binding on either the office or the reader.

Kentucky Office of Insurance

Advisory Opinion 2004-7

Re: Acting as an agent; Termination of appointments

Advisory Opinion 2001-08 was issued to re-emphasize the Department's position concerning the meaning of "acting as an agent." This advisory opinion is meant to clarify this area of confusion centering on one of the activities identified in Advisory Opinion 2001-08 as "acting as an agent." The opinion states:

However, the Department considers a person engaged in any of the following activities to be acting as an agent: 1) collecting or even holding premium in any manner; 2) explaining coverage or benefits to insureds or prospective insureds; 3) quoting rates; 4) actively seeking insureds for a particular insurer; or 5) taking/filling out applications. Anyone found to be engaging in one or more of the named activities, who is not licensed as an agent is in violation of KRS 304.9-080, unless that person is exempted from the definition of an agent pursuant to KRS 304.9-090.

This clarification stems from complaints from agents stating that they work alone and cannot afford to maintain another employee with a producer license for the sole purpose of accepting premium payments and they cannot always be present in the agency to receive them. While the Office strongly supports Advisory Opinion 2001-08, the first defined act listed in the paragraph above does need clarification.

It is the Office's position that "collecting or even holding premium in any manner" does not refer to the act of receiving a premium payment check and issuing a receipt. Simply holding the check or cash in one's hand is not enough to constitute "holding premium"; otherwise all members of the postal service who deliver payments would have to be licensed. Therefore a clerical employee of an insurance agent may receive payments and record them and issue receipts as long as the employee does not deposit the premium into an account in the employee's name, fail to inform the agent of payment, or otherwise wrongfully withhold payment from the agent or the insurer, or in some other fashion deals with the payment negligently or convert it to his own use. This act is to be performed purely as a clerical function. It is also to be understood that the employee cannot bind coverage—only the agent can do so.

This Advisory Opinion is for clarification only. All of the remaining portions of Advisory Opinion 2001-8 still accurately reflect the position of the Office and nothing in this document is to be construed as invalidating those remaining portions.

/s/ Martin J. Koettters

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Kentucky Office of Insurance

11/29/2004

Date

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