

1978 WL 35277 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 22, 1978

*1 Dr. Jack S. Mullins
State Personnel Division
Suite 333
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have requested an opinion whether the contract which you propose to execute with Metropolitan Insurance Company contains sufficient provisions to insure that the State of South Carolina will be treated by Metropolitan on an equal, non-discriminatory basis with all other group policyholders provided the same insurance coverage by Metropolitan. This question has arisen because, under the provisions of New York law, the state in which Metropolitan is incorporated, no insurance company may guarantee a retention rate to a policyholder. Your question specifically then relates to the legal protection which the State of South Carolina would have, as a policyholder, in the event of a later complaint against Metropolitan with respect to the retention rate which it provides the State for any given year under this contract.

In our opinion the surest protection would be provided by a term in the contract whereby Metropolitan agrees to comply with New York law with respect to the determination of the retention rate. It does seem somewhat unlikely, from a practical point of view, that this would be necessary however.

First, Metropolitan has indicated through Mr. Donovan that their intent is to abide by the non-discriminatory statute of New York which requires all domestic insurance companies to treat all policyholders equally with respect to retention and, for that reason, not to guarantee a specific retention rate to any one policyholder because of the potential for prejudice to another policyholder which that would entail.

Since the contract is silent as to the state whose law would govern the relations of the parties in this matter, certainly that letter from Mr. Donovan would be evidence of the parties' intent that New York state law would govern the determination of the retention rate.

There may be other practical reasons why Metropolitan would not take any discriminatory action against the State of South Carolina with respect to the retention rate determination. Based on the foregoing consideration, it seems unlikely that a problem would arise with Metropolitan concerning this question. However, the surest protection would be afforded the State by a clause in the contract whereby Metropolitan agreed to comply with New York in this matter. Such a clause would certainly allow the State of South Carolina then to enforce that New York law against Metropolitan, in the unlikely event that such action would be necessary.

Sincerely yours,

David C. Eckstrom
Staff Attorney

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