

1974 WL 27202 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 23, 1974

***1 RE: Proposed South Carolina Automobile Insurance Facility**

Honorable Howard B. Clark
Chief Insurance Commissioner
S. C. Department of Insurance
2711 Middleburg Drive
Columbia, South Carolina 29204

Dear Mr. Clark:

The following is an opinion issued in response to a question previously submitted by this Office by former Acting Chief Insurance Commissioner Glen E. Craig.

The South Carolina Automobile Insurance Facility has submitted a 'Filing of Rules' pursuant to the ostensible authority of Section 37-686, Code of Laws, 1962. At a hearing before the South Carolina Insurance Commission, the Chairman thereof requested memoranda of position regarding several points, the initial one of which was:

'Whether the Commission is authorized to approve this filing submitted under Section 37-686 to replace the Automobile Insurance Plan formed under Section 46-719 which specifically relates to automobile liability insurance and requires participation by all insurers writing automobile liability insurance in this State.'

Section 37-686 provides:

'Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods—, such agreements and rate modifications to be subject to the approval of the Commissioner.'

This statute was adopted in 1947, while Section 46-719 was adopted in 1952, and provided:

'After consultation with the insurance companies authorized to issue automobile liability policies in this State, the Chief Insurance Commissioner shall approve a reasonable plan or plans for the equitable apportionment among such companies or applicants for such policies and for motor vehicle liability policies who are in good faith entitled to such policies, but are unable to procure them through ordinary methods—. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein.'

In my opinion, the primary question to be considered is not necessarily one of repeal, but of construction. The objective is to ascertain and give meaning to the intent of the General Assembly in the enactment of Section 46-719. The former statute authorized the Commission to approve agreements submitted by groups of insurers with respect to the equitable apportionment among them of assigned risk applicants seeking casualty insurance and unable to procure such insurance through ordinary methods, whereas the latter section makes it mandatory upon the Insurance Commission to approve such a plan with respect to automobile liability insurance and requires that all companies authorized to issue policies of automobile liability insurance participate in the plan approved.

In my opinion, the effect of Section 46-419 is to divest the Insurance Commission of the authority to approve any plan or plans embracing automobile liability insurance unless such plan shall require the participation of all insurance companies authorized to issue automobile liability policies in this State. Stated differently, any such plan approved by the Commission must be subscribed to and participated in by all companies performe the express terms of the statute.

*2 The specific treatment of automobile liability policies by Section 46-719 and the mandatory impositions required by that statute seem to clearly carve out an exception to the general terms of the pre-existing statute. It is an old and familiar principle, closely related to the rule that where an Act contains special provisions, they must be read as exceptions to a general provision in a separate earlier or subsequent Act. 50 Am. Jur. Statutes ¶ 367.

It is therefore my opinion that the Commission does not have the authority to approve the submission.

Other questions were raised by the Chairman and the proponents were invited by him to submit their views thereon. In view of the conclusions set forth above, no remaining issues indicated by the Chairman have been considered.

Very truly yours,

Daniel R. McLeod
Attorney General

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