

Statement by
ROBERT MORGAN, Attorney General
October 31, 1969

Re: Advocating the Public Interest Before the Insurance Commission.

I have been pressed by representatives of the news media to respond to comments made by the Commissioner of Insurance regarding the intervention by the Consumer Protection Division in a hearing before the Insurance Commission in which the insurance industry has requested substantial increases in the present automobile liability insurance rates.

Frankly, I am reluctant to use the media to answer charges from a fellow constitutional officer and a member of the Council of State, who I believe should have instead picked up the phone or invited us to his office to discuss any concern, legitimate or not, which he had.

However, I was not surprised by the Commissioner's comments. He made these same remarks to various representatives of the insurance industry several days ago, but I had hoped that if this was a real concern he would bring it to my attention personally since on a number of occasions I had asked him to let us know if we could assist him. But he has chosen to make public comments instead and I believe that the greatest service we can render the public at this point is to review the facts and attempt to clarify the issues which Mr. Lanier has raised.

For a long while the public has been rightly concerned about higher and higher automobile liability insurance rates. When I ran for the office of Attorney General, I pledged that I would do everything I could to defend the public interest in this area.

Governor Bob Scott also campaigned on a pledge to use the influence and resources of State Government to seek the underlying causes of high automobile liability insurance rates in North Carolina and, if possible, to reduce the rates Tar Heel citizens must pay.

The insurance industry is likewise concerned that maximum competition be encouraged and that they receive a hearing which is not only fair in fact, but appears to the public to be fair. They have a right to be concerned about the public image of their companies and their reputation among the people.

Let us look at the record for a moment. We find that on January 11, 1965, the insurance industry received a 9.9% rate increase for automobile liability rates. On October 18, 1965, the industry received an 11.6% increase and on October 12, 1966, the industry received a 4.2% rate increase. While on April 1, 1968 they received a 2.2% increase, only 23 days later, on April 24, 1968, they received a 9.7% increase and in February of 1969 the insurance industry received a 3.9% rate increase. In July 1969, they asked for another 5% rate increase which is now pending.

So we can see in a period of only four years the insurance industry has received a rate increase of over 41.5%, and is seeking an additional 5% increase. It should be noted that during the period when these increases were granted, Commissioner Lanier not only sat as judge and jury but also served as the Chairman of the North Carolina Auto Rate Administrative Office which actually recommended these increases.

However, while Mr. Lanier was serving as a member of the very Committee that petitioned for rate increases, no other person was present to argue the public's point of view, and he now complains when we attempt to do so. It seems only fair to point out that he occupies such a position by statute. I do not recall though any effort on his part to seek relief from such an untenable position.

It was felt that he would welcome the assistance of someone to speak for the 5 million North Carolinians who purchased insurance, many under the compulsory liability insurance act. We felt certain that he could perform his judicial duties much more effectively if the public, as well as the insurance industry, had a spokesman at the hearings he conducted.

Mr. Lanier has been quoted as saying that the intervention by the Office of the Attorney General in the rate case "on behalf of the public interest left me kind of dumb-founded ..." But surely he knows that the recent session of the General Assembly placed upon the Attorney General the statutory duty to represent the public before the Commissioner of Insurance. In addition, in the English-American legal system, the Attorney General has had for centuries a common-law duty of representing the public in those matters which are of concern to the welfare of the general public.

Surely Mr. Lanier cannot seriously contend that proposed substantial increases in automobile liability insurance rates do not concern the welfare of the general public.

Surely Mr. Lanier cannot seriously contend that an insurance rate hearing should not be a truly adversary proceeding, with adequate representation by advocates for the insurance industry and advocates for the millions of citizens who are required by law to buy liability insurance.

The need for an advocate in behalf of the general public at rate hearings is obvious when one examines the record of rate increases over the past few years which we have just mentioned.

The Commissioner further stated that by intervening in the rate hearing, we have set him adrift and that he has, in effect, come to rest alone on an island, without the benefit of any legal counsel. Again let us look at the facts. The Commissioner of Insurance has three attorneys on his staff under his direction and control in a Legal Division headed by an accomplished attorney who is technically proficient in the field of insurance. These

→ Insurance Commission Attorneys' duties include, and I quote from a job description for such attorneys submitted by Mr. Lanier to the Personnel Department and approved by it on February 15, 1968:

"... (to) perform the usual duties of an attorney by counseling, advising and rendering legal assistance to the Insurance Commissioner ... in all matters necessary for the general administration of the insurance laws of this State. ... This involves the usual duties of research and interpreting the pertinent statutes and applicable case law in order to render

necessary legal advice in evaluating the resolving legal issues which arise in the various fields of insurance administered by the ... Commissioner of Insurance.

"... assisting in the preparation of complex insurance rate cases; advising and counseling with the Commissioner and his staff on insurance matters involving legal implications."

Further, as a matter of fact, a former member of the Attorney General's staff who is a licensed attorney at law and experienced in the field of insurance is the Deputy Commissioner of Insurance in this State.

As to what motives the Commissioner of Insurance has or could have in making such public pronouncements in the face of such facts leaves me somewhat bewildered. I do not know what conclusions to draw from such public statements from the Commissioner and I suggest no conclusions, but when he says that he has no one to turn to for legal advice, he simply ignores the facts.

The Insurance Commissioner is not a party to a law suit when he sits as hearing officer in a rate case. When he sits as a judicial officer, the Insurance Commission has no more need for an attorney to represent him than a Superior Court Judge has for a lawyer to tell him what to do.

The Insurance Commissioner has no direct interest in the outcome of the proceedings conducted before him. The contest is not between the insurance industry and the Insurance Commissioner. It is between the insurance companies, who are asking for more money from the policyholders, and the members of the general public who buy insurance, or in the case of compulsory automobile liability insurance, who are obliged by law to buy insurance.

It is a fact also that by the terms of the Constitution of this State, both the insurance and the insurance buying public are entitled to an open, fair and impartial hearing conducted by an impartial administrative official. Thus I have been concerned by Mr. Lanier's statements that he has been representing the insurance public's interest in rate hearings held by him. If such is the case, then the orders he issues could be voidable as a matter of law, because the insurance industry has every right to have its case heard on the evidence it produces by an impartial trier of facts. It would be, in my opinion, as improper for Mr. Lanier to go into a hearing and act as an adversary against the insurance industry as it would be for him to go into a hearing and side with the insurance industry against the public, for he is acting in a quasi-judicial capacity.

As to any inferences that the Attorney General's office is in a conflict of interest position, I call to your attention that our position in this matter is no different than our position when we appear before the Utilities Commission on behalf of the public.

Commissioner Lanier complains that our insistence that the industry follow the legal rules of evidence has disrupted his hearings. Yet he knows full well that in 1967 the General Assembly passed a law, now codified as G. S. 143-318, which prohibits the Insurance Commissioner or any other agency from making determinations on incompetent or hearsay evidence. That is a matter of law. In our opinion, the Commissioner of Insurance is bound by that law, just as are many other administrative officers in this State, and he has himself acknowledged this fact.

The record shows that the public would benefit from close adherence to established judicial procedure. In 1963 and 1964, the industry sought a 9.9% rate increase. The insurance industry appeared ex-parte before the Commissioner and presented its evidence. The Insurance Commissioner denied the requested rate increase in its entirety. The industry appealed the Insurance Commissioner's ruling to the Superior Court. Because of legal defects in the Commissioner's ruling, the courts of this State remanded the case to the Commissioner with directions to reopen the hearing for the taking of additional evidence and to find a fair rate. On December 18, 1964, the Commissioner ordered the rate increase of 9.9% which was the amount of the original filing. In 1967 the same sequence of events occurred and in 1968 the same sequence of events occurred.

In 1969 in response to the foregoing problems of both the insurance industry and the policy holders of this State, we

carefully analyzed both the law and the facts and we determined that in our opinion the best interest of both the public and the insurance industry could be best served by authorizing a member of the Attorney General's staff to appear in rate hearings before the Insurance Commissioner or any other agency to represent the public's interest. We arrived at that conclusion because we recognize that a salient fact in a rate filing is, the industry becomes like a plaintiff in a law suit and the policy holders or rate paying subscribers become like a defendant in a law suit. That is, if the industry prevails, the defendants, i.e., the public, will have to pay additional money as the result of that rate filing. We presented this to the General Assembly and as we previously noted, the General Assembly specifically directed the Attorney General to intervene in such matters when the public interest requires it.

I have no apology to make for directing the Consumer Protection Division to intervene in this rate hearing before the Insurance Commission nor in any other rate hearing where we feel the public interest requires such an intervention. Though we have been vigorous, I believe we have acted properly under a specific grant of legislative authority, and with dignity in the matter, with proper respect shown Mr. Lanier at all times. That is the duty of my office. I shall do no less.

And while I neither seek nor enjoy criticism from any quarter, I shall not allow such criticism to deter my efforts to protect the public's interest.