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October 29, 1953
Letter Opinion No. 53-137-L

Mr. H. William Tennyson, Actuary
Arizona Corporation Commission
Division of Insurance
Phoenix, Arizona

Dear Mr. Tennyson: Re: Special endorsement to policy form
#673, American Farmers Insurance Co.

This is in reply to your letter dated October 27, 1953 in which you seek our advice as to whether you may legally approve the special endorsement to American Farmers Insurance Company policy form #673 which you submitted to us for review.

An examination of the endorsement reveals that it is intended to modify the original contract to which it is to be attached. By its terms it purports to reduce certain benefits payable to an insured under the original policy and provides for no other consideration for the endorsement than that expressed in the original policy. The endorsement is to become effective, as provided therein, upon its receipt by the insured. No provision appears for agreement by the insured to the modification of the contract.

With these provisions in mind it is desirable at this time to review the principles of law applicable to this modification. It is well settled that policies of insurance are written contracts by the parties and are governed by the same principles which are applicable to contracts generally. (BOYER v. UNITED STATES FIDELITY AND GUARANTY COMPANY, 206 Cal. 273, 274 P. 57.) It is further recognized that insurance contracts may be changed or modified by a new and distinct agreement subsequently entered into by the parties or their authorized agents (44 C. J. S., Sec. 290, page 1120). But the modification of a contract of insurance is governed by the same rules which are applicable to contracts generally and the same elements essential to the validity of the original contract are essential to a modification thereof. (BASSI v. SPRINGFIELD FIRE INSURANCE COMPANY, 57 Cal. App. 707, 208 P. 154.) These essential elements as announced by our Supreme Court are (1) parties competent to contract, (2) subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. (EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD. v. FROST, 48 Ariz. 402, 62 P. 2d 320.)

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Applying these principles to the proposed endorsement it appears that the endorsement violates the essential elements of contract by providing that the endorsement shall become effective upon receipt without any apparent provision for agreement to the modification by the insured. It further violates the principles set forth above, inasmuch as no consideration is given for the modification, and Section 14 (1) of Form #673 does not operate to affect this interpretation.

For the reasons above cited it is, therefore, our opinion that the Insurance Division of the Corporation Commission cannot legally approve the special endorsement form submitted.

Very truly yours,

DAVID S. WINE
Assistant to the
Attorney General

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