STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
100 VAN NESS
SAN FRANCISCO, CA 94142

ALL ADMITTED SURETY INSURERS: BULLETIN NO. 137

SUBJECT: "PREMIUM" ON UNDERTAKING OF BAIL

The Supreme Court of California in the case of GROVES v. CITY OF LOS ANGELES, 40 A.C. 786, has decided that the full amount paid by or on behalf of the principal (the arrestee released on the undertaking) is the premiums for the undertaking of bail. This decision is consistent with the position taken by this Department, the Attorney General's Office and the State Board of Equalization in tax cases now pending. It is contrary to the contention of surety insurers issuing undertakings of bail that only the portion of the full payment which eventually reaches the surety company itself, as distinguished from its agents and general agents, is the premium.

Consistent with this opinion, this Department will expect all surety insurers to report as premium on their Annual Statements and on all other documents filed with this Department which call for a report of premium volume the full amount paid for all undertakings of bail. The Department of Insurance will also expect that the premium shown on the undertaking of bail will be the full amount charged therefor. Failure to do so will constitute a violation of Insurance Code Section 381(f).

Finally, attention is directed the McBride-Grunsky Insurance Regulatory Act of 1947, as set forth in Article 1, Chapter 9, Part 2, Division 1 of the Insurance Code (Sections 1850 to 1860.3). Surety Insurance, including undertakings of bail, is subject to regulation under this article. Insurers who have in the past allowed agents to make individual variations in the charge made to principals and who have permitted agents to vary these charges without being consistent are warned that a continuation of this practice will inevitably result in unfair discrimination. Surety insurers may set up proper rate-making schedules taking into consideration proper standards for such rates as set forth in Insurance Code Section 1852. Such rates must, however, be uniformly applied by all agents, unless a proper basis for discrimination under the Act exists. It is the position of the Department, based on the above case, that the artificial distinction between premium and service charges heretofore made by bail agents must be eliminated. If special services are involved, this factor may be taken into consideration in formulating the rate. This does not preclude the bail agent from securing reimbursement, over and above the premium, exactly equivalent to necessary out-of-pocket expenses in connection with the individual bail where the service of the third party guards are procured, necessary long distance telephone expenses, etc. The manner in which such charges must be presented to the principal or person arranging for bail is already covered in Section 2094 of Title 10 of the California Administrative Code and will be further dealt with in a forthcoming revision of the rules and regulations governing bail bond transactions set forth in Article 2 of Subchapter 1 of Chapter 5 of such Title. Such charges need not be reported as premium if all of the following circumstances exist:

1. They must be special charges for an individual case and not charges common to bail transactions generally;
2. They must be in the exact amount of out-of-pocket expenses; and
3. They must be specifically described in the written statement of charges delivered to the principal or person arranging for bail.

Dated:
June 1, 1953

/s/ John R. Maloney
Insurance Commissioner