NOTES AND COMMENT

surance agent is primarily a private enterprise. *Hobbins v. Hannan et al.*, 186 Wis. 284. To limit the number of agents in a particular locality is to deprive persons following such occupation of their property without due process of law. *Northwestern Natl. Ins. Co. v. Fishback*, 130 Wash. 470. As to dealing with agents, the jurisdiction of the insurance commissioner is purely statutory. *Union Indemnity Co. v. Smith*, 187 Wis. 528 @ 538. The commissioner cannot draw up an insurance form, as that function is legislative. *Dowling v. Lancashire Ins. Co.*, 92 Wis. 63. A legislature cannot authorize a municipality to levy in order to raise funds for a mere private purpose. *Broadhead v. Milwaukee*, 19 Wis. 624. Where a state law and a city law each levy a tax of 2% on premiums, the result is double taxation. *Fire Dept. v. Tuttle*, 48 Wis. 91. A state cannot make past compliance with an unconstitutional tax a condition precedent to a renewal of a license, as where premiums were deemed personalty and taxed at 30% of value. *Hanover Fire Ins. Co. v. Harding*, 272 U.S. 494. If the revenue purpose is more important than the regulative, the imposition is a tax. *San Francisco v. Liverpool & L. & G. Ins. Co.*, 74 Cal. 113.

O'Gorman & Young v. Hartford Fire Ins. Co. establishes the proposition that agency commissions may be controlled and limited by legislative fiat. It will be interesting to observe whether and how legislatures extend the police power to other details of the insurance business.

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**RONALD A. PADWAY.**

**JOINT ADVENTURE—**Whether a joint adventurer can claim compensation for services rendered in conducting the affairs of the adventure, in the absence of an express agreement to that effect, is the ultimate problem presented in *Week v. Week's Estate*, 235 N.W. 448, (Wis.).

Plaintiff and the deceased defendant entered an oral agreement in 1902, whereby they agreed to make equal contributions to the expense and to share equally the profits and losses of developing water power on the Spokane river. They worked together for seven years when in 1909 the deceased left Spokane. From 1909 to the time of actual sale, the plaintiff and defendant were on the look-out for buyers. In 1924, mostly through the efforts of deceased and an attorney hired by him, the property was sold.

The plaintiff claims that the deceased agreed to compensate him for the time and service he devoted to the adventure in excess of the time and service deceased gave to it, and that he is entitled to recover the deceased's estate $25,000 as a reasonable value of such excess.

Plaintiff claims that since deceased was away from Spokane for about fifteen years, he (the plaintiff) should be compensated for look-
Plaintiff also relies upon some statements deceased is supposed to have made in regard to compensating him for his efforts. However the facts seem to tell a different story—the claimant did not devote his whole time to the enterprise after deceased left, but merely hired others to do the work; the claimant did not press his claim during the lifetime of deceased who lived about six years after the closing of the sale and made no claim until the sale was consummated. At that time he wrote deceased a letter to the effect that due to the fact that deceased sold the property; the plaintiff was prevented from selling at a higher price; that if allowed to sell it, the plaintiff would have been able to get $50,000 more than deceased received, and plaintiff's share would have been increased $25,000. He asked that in view of this fact and the faithful service he has performed, the deceased should pay him the $25,000 as a fair settlement.

Outside of these mere conjectures that deceased ought to pay, there does not appear to be any reference made to an agreement to pay.

The court in a concise opinion points out that the relation of joint adventurers, as to their obligation and right, are practically the same as those of partners. Barry v. Kern, 184 W. 266, 199 N.W. 77; Reingert al v. Nelson, 199 W. W. 482, 227 N.W. 14. In the absence of special agreement to the contrary, a partner is not entitled to compensation for services rendered in conducting the partnership affairs, no matter how much more time he may have given than the other or how much more valuable and effective his service may have been. This is the rule by common law and by statute. Section 123.15 (6) Stats. This same rule is true as between joint adventurers, 33 Corpus Juris p 860. Plaintiff contends that the existence of an agreement for compensation may be implied from the circumstances as well as proved by direct and positive testimony. To this the court answers that even if this were true, the circumstances must show that such agreement was actually made.

From this case it may be gathered that a joint adventure will be treated very much like a partnership and that in order that joint adventurer be entitled to compensation for services rendered in conducting the joint adventure, there must be a special agreement to that effect clearly proven by direct testimony and that one will not be injured from mere circumstantial evidence.

Thaddeus Wasielewski.