



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 18, 1997

Ms. Mary Keller
Senior Associate Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Open Records Decision No. 653

Re: Scope of the term "underwriting guidelines" for purposes of article 1.24D of the Insurance Code; whether article 17.22 of the Insurance Code exempts county mutual insurance companies from the application of article 1.24D (ORQ-3)

Dear Ms. Keller:

The Texas Department of Insurance (the "department") received a request for information that raises article 1.24D of the Insurance Code, a provision that pertains to insurance company underwriting guidelines.¹ The request involves the underwriting guidelines of a certain county mutual insurance company. We addressed this request in Open Records Letter No. 95-237 (1995). You ask that we reconsider our decision in that letter in order to give county mutual insurance companies an opportunity to present their arguments.

In Open Records Letter No. 95-237 (1995), this office considered whether a county mutual insurance company's underwriting guidelines are excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with article 1.24D(a) of the Insurance Code. The decision also considered the effect of another Insurance Code provision, article 17.22, which exempts county mutual insurance companies from the application of certain insurance laws. In that letter, we concluded that the department must release to the public the underwriting guidelines of a certain county mutual insurance company. We have considered the arguments of several county mutual insurance companies and conclude that the decision in Open Records Letter No. 95-237 (1995) is correct.

¹See Attorney General Letter Opinion No. 94-061 (1994) at 2 n.1 (concerning definition of "underwriting guidelines").

Section 552.101 of the Government Code exempts from required public disclosure information that is confidential by law, including information that is deemed confidential by statute.² Article 1.24D(a) of the Insurance Code authorizes the department and the office of public insurance counsel to request and obtain an insurer's underwriting guidelines and provides for confidentiality for the underwriting guidelines so obtained:

(a) The department or the office of public insurance counsel may request and receive copies of an insurer's underwriting guidelines. Underwriting guidelines are confidential and the department or the office of public insurance counsel may not make the guidelines available to the public, provided, however, that the department or the office of public insurance counsel may disclose a summary of the underwriting guidelines in a manner that does not directly or indirectly identify the insurer who provided the guidelines.

Article 17.22 of the Insurance Code exempts county mutual insurance companies from the application of certain insurance laws, and provides:

(a) County mutual insurance companies shall be exempt from the operation of all insurance laws of this state, except such laws as are made applicable by their specific terms or as in this Chapter specifically provided. In addition to such other Articles as may be made to apply by other Articles of this Code, county mutual insurance companies shall be subject to:

- (1) Subdivision 7 of Article 1.10 of this Code;
- (2) Articles 1.15A, 1.24, 2.04, 2.05, 2.08, 2.10, 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49 of this Code; and
- (3) Article 7064, Revised Statutes.

Ins. Code art. 17.22(a). Under article 17.22(a), an insurance law applies to county mutual insurance companies in only two instances: (1) when the law itself so provides, or (2) when article 17.22(a) so provides. With regard to the first instance, we observe that article

²It is suggested that section 552.101 may apply to the requested information because the department "may have obtained [it] under a written statement of confidentiality creating a confidential agreement covering these guidelines." Section 552.101 may not be invoked based on an agreement to keep information confidential unless a governmental body is specifically authorized by statute to enter an agreement to keep information confidential. *See* Open Records Decision No. 444 (1986) at 6. We are not aware of a statute that authorizes the department to enter into an agreement with an insurance company to keep underwriting guidelines confidential.

1.24D(a) is not made applicable to county mutual insurance companies by its own specific terms.³ With regard to the second instance, article 17.22 lists the Insurance Code provisions that apply to county mutual insurance companies. Article 1.24D, which makes confidential underwriting guidelines, is not on that list.

The question is whether article 17.22 removes county mutuals from the operation of article 1.24D.⁴ We believe article 17.22 explicitly answers this question.

By specifying particular statutes that are applicable to county mutual insurance companies, those that by their own terms are made applicable to county mutual insurance companies and those that article 17.22(a) lists as applicable to county mutual insurance companies, article 17.22 excludes all other statutes not included in the specification. The fact that article 17.22 contains a list of applicable statutes discloses the legislative intent that there should be no other statutes applicable to county mutual insurance companies. We cannot by implication engraft article 1.24D onto the list in article 17.22, for to do so is inconsistent with the express legislative intent that only the statutes enumerated therein or those statutes made applicable to county mutuals by their specific terms apply to county mutual insurance companies. *See generally* 67 Tex. Jur. 3d *Statutes* §§ 119, 120, 121 (1989).

It is argued that the trade secret value of underwriting guidelines that is legislatively recognized for other insurance companies should not be denied to county mutual insurance companies, which, we are informed, are more freely competing, rate-regulated insurers, for to do so is not fair to county mutual insurance companies. The fact that a good reason may exist to enlarge the list of statutes applicable to county mutuals does not justify a construction of article 17.22 that is inconsistent with its express terms. For example, even though article 21.21 of the Insurance Code protects consumers from unfair and deceptive insurance acts by insurance companies, the exclusion of article 21.21 from the article 17.22 list exempted county mutuals from the provisions of article 21.21. *See Arnold v. National County Mut. Fire Ins. Co.*, 725 S.W.2d 165 (Tex. 1987); *Jewell v. Mobile County Mut. Ins. Co.*, 566 S.W.2d 295 (Tex. 1978).⁵

³For example, article 1.24D does not define “insurer” to include county mutual insurance companies. In contrast, article 1.24B of the Insurance Code makes that provision applicable to county mutual insurance law by defining “insurer” to include county mutual insurance companies.

⁴While the question posed certainly has implications about whether article 1.24D authorizes the department to request a county mutual insurance company’s underwriting guidelines, we need not address that implication in this open records decision.

⁵Article 17.22 was amended in 1981 to make county mutuals subject to article 21.21.

It is also argued that since article 1.24D(a) is directed to the department rather than to the county mutual insurance companies, the article 17.22 exemption for county mutual insurance companies from the application of insurance laws should not apply. This argument fails, however, for two reasons. First, the article 17.22 exemption of county mutual insurance companies from the "operation of all insurance law of this state," (except for those laws listed or made applicable by their specific terms) is not limited in any way only to those laws directed to the county mutual insurance companies and not to laws directed to the department. Second, the list of code provisions which are applicable to county mutuals includes a provision that is "directed to the department," article 1.24. Article 1.24, a provision similar to article 1.24D, authorizes the Board of Insurance to make inquiries to any insurance company and requires the insurance company to answer such inquiries within a certain timeframe. The provision also contains a confidentiality provision that applies to a response made under article 1.24. If the exemption of county mutual insurance companies from the application of insurance laws did not include laws that are directed to the department, the legislature did not need to include article 1.24 in the list of laws that are applicable to county mutual insurance companies. Thus, we cannot conclude that the article 17.22 exemption of county mutual insurance companies from the operation of all insurance laws (with exceptions) does not include laws that are directed to the department.

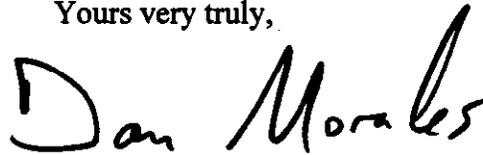
The legislature's intention is manifest in article 17.22. The legislature did not list all of the many insurance code provisions that do not apply to county mutuals. Rather, it chose to put into the statute the short list of statutes that are applicable to county mutual insurance companies, a list that the legislature, rather than this office, is free to alter. As article 1.24D does not appear on that list, the legislature plainly did not intend county mutuals to be subject to that provision. Consequently, the department may not withhold from disclosure the underwriting guidelines of county mutual insurance companies based on section 552.101 of the Government Code in conjunction with article 1.24D of the Insurance Code.⁶

⁶Some county mutual insurance companies inform us that the department requests their underwriting guidelines pursuant to articles 1.24 and 1.24D of the Insurance Code. The department does not assert that it obtained the underwriting guidelines at issue in Open Records Letter No. 95-237 (1995) pursuant to article 1.24 of the Insurance Code. We note that information the department obtained pursuant to article 1.24 of the Insurance Code remains confidential if it is "otherwise privileged or confidential by law unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction." Ins. Code art. 1.24. We also note that this decision does not consider whether the department must withhold from public disclosure the county mutual insurance company's underwriting guidelines based on section 552.110 of the Government Code. See Open Records Decision No. 609 (1992). We will consider the application of section 552.110 to the requested information in separate letter rulings.

SUMMARY

Article 1.24D of the Insurance Code does not make confidential the underwriting guidelines of county mutual insurance companies.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive style with a large, prominent "D" at the beginning.

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