



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 18, 1993

Mr. Jeff D. Hankins
Legal Assistant, Regulated Lines Section
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR93-240

Dear Mr. Hankins:

The Texas Department of Insurance has received an application for information pursuant to the Open Records Act, V.T.C.S. art. 6252-17a, from an Austin attorney. He asks to inspect and/or duplicate "all statements, invoices, or billings from Christopher Fuller and/or Scott, Douglass & Luton for legal services and expenses relating to the receivership of American Teachers Life Insurance Company." By letter of April 10, 1992 to this office, you requested a ruling on his application for information. We have assigned your letter ID# 15629.

You state that the invoices are related to litigation pursued by the receiver of American Teachers Life Insurance Company involving the disposition of claims to and assets of the receivership estate. You also claim that the invoices are in the possession of the receiver only in her capacity as court-appointed receiver of the company, and that they are therefore records of a the judiciary, which are not subject to the Open Records Act. V.T.C.S. art. 6252-17a, § 2(1)(H).

The invoices show on their face that they were sent by the law firm to the Liquidation Department of the Texas Department of Insurance for payment.¹ The invoices were thus in the physical custody of that division of the Department of Insurance. We must determine whether the Department of Insurance holds the invoices as agent of the judiciary or in its own right as an executive branch agency subject to the Open Records Act.

In 1990, when American Teachers Life Insurance Company was placed in receivership, article 21.28 provided that the liquidator designated by the State Board of

¹The separate position of liquidator has been abolished, and the "liquidator" is now defined as "receiver." Ins. Code art. 21.28, § 1(d).

Insurance was appointed receiver by the court.² The receiver then had authority, subject to the direction of the court, to conduct the insurer's business, including the authority and responsibility of bringing lawsuits and being sued on behalf of the insurance company. Ins. Code art. 21.28, § 2(g). Attorneys appointed to handle these suits were, and are, paid out of the assets of the insurance company. *Id.* § 12(b); see Attorney General Opinion WW-432 (1958) at 3 (attorneys appointed by State Board of Insurance to conduct litigation on behalf of receivership estate is not an agent of board even though appointed by board). The liquidator/receiver's staff in the Liquidation Division was assisting the receiver to conduct the business of the insurance company in receivership when it received the attorney fee bills.³

The fee bills that have been requested are records of the receiver operating under judicial authority and supervision and accordingly are not records of a governmental body subject to the Open Records Act. See Open Records Decision No. 610 (1992).

²Article 21.28 of the Insurance Code, which establishes the general procedures for receivership of an insurance company, was amended in 1991. Acts 1991, 72d Leg., 2d C.S., ch. 12 at 252-366. It now provides that the commissioner of insurance or a person designated under contract by the commissioner shall act as receiver. V.T.C.S. art. 21.28, §§ 2(A), 12(b). The amendments to article 21.28 were effective January 1, 1992, but were not applicable to liquidation proceedings initiated against an insurer declared insolvent before that date, except that the commissioner could elect to assume the commissioner's responsibilities under article 21.28 in proceedings initiated under article 21.28 before the effective date. Acts 1991, 72d Leg., 2d C.S., ch 12, § 1.27(a), (c) at 310. We see nothing in the file to indicate that the commissioner had elected to assume these responsibilities toward this receivership as of the time the application for records was received. Therefore, we will rely on to the provisions of article 21.28 in effect prior to January 1, 1992.

³The liquidator and employees of the liquidator are sometimes involved in receivership, and sometimes in other duties of the Department of Insurance. This is reflected in section 12A of article 21.28, which permits payment of these persons from appropriated funds, "other than funds or assets of insurers being liquidated, rehabilitated, reorganized or conserved," in order to ensure that "facilities be immediately and continually available to meet . . . the requirements of preparing for, placing in, continuing or completing any liquidation, rehabilitation, reorganization or conservation of insurers" and to provide that they may be used for other Insurance Department duties "when not involved in liquidation or conservation matters."

If you have any questions with regard to this letter, please contact our office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SLG/MRC/le

Ref.: ID#s 15629, 15674, 15770, 15960

Enclosures: submitted documents

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