



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Claude A. Williams
Assistant Secretary of State
Austin, Texas

Dear Sir:

Opinion No. O-1625
Re: Construction of Article 5064,
Revised Civil Statutes of Texas,
1925, with respect to limitations
against corporation receiving a
portion of agent's compensation.

This will acknowledge receipt of your letter of October 25, 1939, in which you request the opinion of this department on the question therein set out.

We deem it essential to herein set out the pertinent parts of your letter as follows:

"We have had submitted to us an application for charter for a proposed corporation to be known as 'Texas State Life Underwriters, Incorporated' which seeks a charter for the purposes set forth in Article 1304b, R. C. S., 1925.

"The incorporators seek to turn in to the corporation in payment of its capital stock certificates of interest and/or units in and to Texas State Life Underwriters, a trust estate of which Thomas S. Falvey is Trustee, and which said Trustee is the owner and holder of a contract with Texas State Life Insurance Company, an insurance corporation organized and existing under the laws of this State for the purpose of engaging in the life insurance business and by the terms of said contract, the said Trustee is given a 10% interest in and to the gross premium income of Texas State Life Insurance Company, a corporation. A copy of said contract is attached hereto for your inspection.

Hon. Claude A. Williams, Page 2

"It is the opinion of this office that should we grant this charter and Thomas S. Falvey agrees to pay to the corporation a percentage of his commission that he would ipso facto forfeit his right to act as the Agent of an insurance company and the Texas State Life Insurance Company would be subject to having its right to do business forfeited and if either one or both of these things occurred, the interest in the trust estate hereinabove referred to would be rendered worthless.

"If Thomas S. Falvey agrees, by contract, to pay to the proposed corporation the dividends, which would otherwise go to the unit holders in the Trust Estate, would such act be in violation of Article 5064, R. C. S., 1925?"

Article 5064, Revised Civil Statutes of Texas, 1925, reads:

"No corporation or stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State. No life insurance company shall be granted a certificate of authority to transact business in this State, which has or is bound by any valid subsisting contract with any other corporation, by virtue of which such other corporation is entitled to receive, directly or indirectly, any percentage or portion of the premium or other income of such life insurance company for any period. No person shall be granted a certificate of authority as the agent of any life insurance company who enters into any contract with any corporation other than such life insurance company, by virtue of which such other corporation is entitled to receive, directly or indirectly, any compensation earned by him as agent for such life insurance company, or any percentage or portion thereof for any period."

Hon. Claude A. Williams, Page 3

The above article was taken from Senate Bill 291, General Laws of Texas, 1909, page 192, which bill was a lengthy measure providing for the incorporation, regulation and supervision of life, accident and health companies.

It appears from information furnished this office that the Texas State Mutual Life Insurance Company, after its organization, entered into a contract with Dr. Thos. S. Falvey during the year 1934, by the terms of which Dr. Falvey was given a twenty-year general agency contract; that thereafter, the Texas State Life Insurance Company was formed and the insurance of Texas State Mutual Life Insurance Company was reinsured by such new company and by appropriate action the Falvey contract became an obligation of the Texas State Life Insurance Company. In the interim, Dr. Falvey created a "trust estate" and sold "certificates of interest in and to Texas State Life Underwriters". The certificate so sold had as their financial basis a one-half interest in and to the Falvey contract.

It is urged by the attorney for the proposed corporation, the "Texas State Life Underwriters, Inc." that "at no time and under no condition is the general agency contract to be transferred or delivered to the new corporation, this being a contract held independently by Dr. Falvey". How can it be urged that such contract is being held independently by Dr. Falvey when he has issued certificates of interest based upon one-half of the income provided by such contract to various and sundry persons who now propose to use such certificates of interest in payment of shares of stock in a new corporation? Can it be urged that the new corporation, by virtue of the ownership of the certificates of interest in and under such Falvey contract will not be "entitled to receive, directly or indirectly, any compensation earned by him as agent for such life insurance company"?

It is the opinion of this department that the new corporation, if chartered, would be entitled indirectly to receive a portion of the compensation provided by the Falvey contract in violation of Article 5064, supra.

Hon. Claude A. Williams, Page 4

Trusting that this satisfactorily answers
your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*
Lloyd Armstrong
Assistant

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APPROVED NOV 20, 1939

Gerardo Mason
ATTORNEY GENERAL OF TEXAS

