



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Marvin Hall,
Fire Insurance Commissioners
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Attention: Mr. Girard Kinney
Opinion No. 0-1931

Re: Is the Board of Insurance
Commissioners authorized
to grant a general agent's
license to an organization
whose business is insurance
management when that organi-
zation has assumed or is
contemplating assuming cor-
porate entity?

You request for an opinion on the above stated
question has been received by this department.

Your letter reads as follows:

"A question has arisen in this Department
as to whether or not general insurance agents
whose duties are of a supervisory nature may be
incorporated.

"We find by checking the Secretary of State's
records that none of the fifty-five general agents
licensed by this Department are incorporated to
operate in the insurance business. Several of the
organizations are incorporated to engage in a sub-
sidiary business such as loans, brokerage, et
cetera. For example, Richard Gill & Company, San
Antonio, is incorporated to engage in the loan
business; however, the same individuals operate
an insurance agency but this business is not in-
corporated. An examination of the charter issued
to this business reveals that the purpose clause
does not include any insurance activities.

"We are advised by the Secretary of State's office that that office has repeatedly declined to incorporate any business which stated as its purpose insurance.

"We find that in at least one case tried before the courts prior to the enactment of the Agents' Licensing Law (Article 5062A) in 1931, it was decided that the Board could not refuse to license a corporation; however, under Section 5 of Article 5062A the Legislature has stated: 'The Board shall not issue a license to a corporation.'

"However, under Section 12 of this same Article, general agents are excluded from all the provisions of the Act - 'No provision of this Act shall apply to ... any general agent or state agent or branch manager representing an admitted and licensed insurance company or carrier or insurance companies or carriers in a supervisory capacity.'

"It has, therefore, been the attitude of this Department for sometime that should a corporation apply for license to operate in the general insurance business as general agents a license should be granted.

"We respectfully submit to you the question: Is the Board of Insurance Commissioners authorized to grant a general agent's license to an organization whose business is insurance management when that organization has assumed or is contemplating assuming corporate entity?"

Article 5062A, Vernon's Annotated Civil Statutes reads in part as follows:

"Sec. 1. Insurance agents, as that term is defined in the laws of the State, shall for the purpose of this Act be divided into two classes; Local Recording Agents and Solicitors.

"Sec. 2. By the term 'Local Recording Agent' is meant a person or firm engaged in

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soliciting and writing insurance, being authorized by an Insurance Company or Insurance Carrier, including Fidelity and Surety Companies, to solicit business and to write, sign, execute and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a Local Recording Agent representing an Insurance Carrier in its relation to the public.

"By the term 'Solicitor' is meant a person officing with, and engaged in, soliciting insurance on behalf of a Local Recording Agent, who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a Solicitor of a Local Recording Agent who places business of a class which the rules of the company or carrier require to be placed on application or to be written in a supervisory office.

"Sec. 3. When any person or firm shall desire to engage in business as a Local Recording Agent for an Insurance Company or Insurance Carrier, he shall make application for a license to the Board of Insurance Commissioners, in such form as the Board may require, and such license may be issued by said Board in the form prepared by it when he shall be found of good character and good reputation. The Board is authorized to issue licenses to firms or to individuals engaging as partners in the insurance business provided the names of all persons interested in such firm are named in the license, and provided, further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the State line may run and whose residence is in the town in the adjoining State may be licensed, if he has during the last preceding two years been licensed by the State, and if his business office has been and is being maintained in this State. The Board shall not issue a license to a corporation.

"Sec. 12. No provision of this Act shall apply to the Life Insurance business or the Life Department of the companies engaged therein, nor shall it apply to any of the following, namely:

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(d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed Insurance Company or Carrier, or Insurance Companies or Carriers in a supervisory capacity."

Article 1302, Vernon's Annotated Civil Statutes, which specifies the purposes for which private corporations may be formed, does not authorize insurance agents whose duties are of a supervisory nature to incorporate. Section 3 of Article 5062A, supra, specifically provides that "the Board shall not issue a license to a corporation". Under Section 12 of the same article, general agents are excluded from all the provisions of the Act, providing in part that "no provision of this Act shall apply to ... any general agent or state agent or branch manager representing an admitted and licensed Insurance Company or Carrier, or Insurance Companies or Carriers in a supervisory capacity". However, as above stated, Article 1302, supra, does not authorize general insurance agents whose duties are of a supervisory nature to incorporate. We do not think that Section 12 of Article 5062A, supra, authorizes the incorporation of general insurance agents for the purposes above indicated. Although such agents are excluded from all the provisions of the Act under Section 12 of Article 5062A, supra.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this department that your question must be answered in the negative.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams

Ardell Williams
Assistant

RECEIVED FEB 19, 1940

AW:jm

Gene E. Mason
ATTORNEY GENERAL OF TEXAS

