



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. P. Gibbs, Commissioner
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Attention: Mr. Vestal Lemon

Opinion No. 0-5104

Re: Do the provisions of the
T. I. A. Form 81-B (Jack
Pinkston, agent) violate
the provisions of Sections
7 and 8, Article 4682b,
Vernon's Annotated Civil
Statutes?

Your recent request for an opinion of this department upon the above stated question has been received.

We quote from your letter as follows:

"We are submitting herewith a photostatic copy of T.I.A. Form No. 81-B.

"Section (1) of this form provides that Jack Pinkston, acting either individually or through his attorneys, will perform certain duties in behalf of the individual or concern filing an application with the Interstate Commerce Commission for a certificate or permit. For this service, it is agreed that Jack Pinkston will receive the sum of 5% of the gross earnings of the trucking operations for the life of the certificate or permit.

"Section (2) provides in substance that if the individual or concern, entering into the contract, places his or their insurance with Jack Pinkston, then and in that event, the provisions of Section (1) become inopera-

tive during such time as the insurance is carried.

"Jack Pinkston is authorized by the Board of Insurance Commissioners to act as an agent in the solicitation and the writing of fire and casualty insurance in the State of Texas.

"We respectfully request your opinion as to whether the provisions of the attached form are in violation of the provisions of Sections 7 and 8 of Article 482b, Revised Civil Statutes."

The above mentioned form reads as follows:

"STATE OF TEXAS |

COUNTY OF NOLAN |

"KNOW ALL MEN BY THESE PRESENTS:

"(1) That I, GUS HIGSBY of 106 Elm St. Sweetwater, Texas, for and in consideration of certain services rendered and to be rendered me by Jack Pinkston, acting either individually or through his attorneys, agents or other employees--To Wit: Securing and furnishing me with full information regarding the laws, rules and regulations pertaining to my operation; furnishing me with all blanks, forms and materials necessary to filing an application with the Interstate Commerce Commission for a certificate or permit; preparing all such papers for filing and filing the same; advising me regarding the type of testimony required and assisting me with the preparation of the same; furnishing me with competent representation at my hearing and keeping me fully advised at all times as to developments in connection therewith; and performing whatever other services and assisting me to whatever extent may be

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necessary in obtaining a certificate or permit from the said Interstate Commerce Commission and servicing same for the life of said certificate or permit -- I do hereby covenant and agree to pay to the said Jack Pinkston, at his office in Dallas, Texas or elsewhere as he may designate, the sum of 5% per year of the gross earnings from my trucking operations, for the life of said certificate or permit.

"(2) It being expressly provided, however, that if I elect to place such and all such insurance as is or will be required by the Interstate Commerce Commission covering my operations under said certificate or permit through whatever channels may be designated by the said Jack Pinkston, then and in that event Paragraph (1) of this contract shall become inoperative during such time and only during such time as my insurance is so carried. In this event, I hereby authorize the said Jack Pinkston to prepare and sign for me any and all such data and necessary forms in connection with the handling of such insurance. All premiums accruing under such insurance shall be payable at the office of Jack Pinkston in Dallas, Texas or elsewhere as may be designated by the said Jack Pinkston.

"(3) That I have made, constituted and appointed and by these presents do make, constitute and appoint JACK PINKSTON of Dallas, Dallas County, Texas, my true and lawful attorney for me in my name, place and stead, to prepare and sign for me any and all data and necessary forms in connection with my application for a certificate or permit to operate as a motor carrier under the Interstate Commerce Commission, and to prepare and submit any and all such data relating to any such certificate or permit or any changes which may be necessary to make in such certificate or permit, and to do any

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and every act and exercise any and every power that I might or could do or exercise through any other person, that he shall deem proper or advisable in connection with such certificate or permit.

"I hereby bind myself, my heirs, executors, administrators and assigns to fulfill this contract and agreement as above stipulated.

"Witness my hand on this, the 20th day of November, A.D. 1940.

BY _____
Title

"STATE OF TEXAS
COUNTY OF NOLAN. |

"Before me, the undersigned authority, on this day personally appeared GUS RIGSBY, personally known to me, and being first duly sworn, upon oath, deposes and says that he has carefully examined all of the stipulations, condition and agreements set forth above; that he fully understands the same and acknowledged to me that he has executed this contract for and in consideration of the stipulations therein contained.

"Witness my hand and seal of office this the 20th day of November 19 40.

Notary Public Nolan County Texas.

T.I.A. Form No1 81-B"

Sections 7 and 8 of Article 4682b, Vernon's Annotated Civil Statutes, read as follows:

"Sec. 7. It shall be unlawful for any insurer, as defined in this Act, or

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its officers, directors, general agent, State agents, special agents, local agents or other representatives, to grant to or contract with insured for any special favor or advantage in dividends or other profits, or any commissions or divisions of commissions or profits to accrue thereon, or any compensation or any valuable consideration not specified in the policy contract, or any inducement not specified in the policy contract, for the purpose of writing the insurance of any insured. Nothing in this Section, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policy holders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of an equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Commissioner. No part of any profit shall be distributed to any insured under any such policy until the expiration of the policy contract. Any violation of the terms of this Section shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating.

"Sec. 8. No insurer coming within the terms of this Act shall, in its business in this State, make or permit any distinction or discrimination in favor of the insured having a like hazard, in the matter of the charge of premiums for insurance, or in dividends or other benefits payable under

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any policy, nor shall any such insurer or agent make any contract of insurance, or agreement as to such insurance, other than expressed in the policy, nor shall any such insurer or its agents or representatives pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insured, any rebate payable upon the policy or any special favor or advantage in dividends or other benefits to accrue, or anything of value whatsoever, not specified in the policy; provided that nothing in this Act shall be construed to prohibit the modification of rates by an experience rating plan designed to encourage the prevention of accidents and to take account of the peculiar hazards of individual risks, provided such plan shall have been approved by the Commissioner; and provided further that only one such plan shall be approved for each form of insurance hereunder."

We believe that the offer to perform and render all of the services mentioned in the first paragraph of the above quoted form without making the charge for such services as specified therein, provided the insured agreed to place all insurance as is or will be required of him by the Interstate Commerce Commission covering his operations under his certificate or permit, through whatever channels as may be designated by the party performing the above mentioned services is a consideration and inducement not specified in the policy contract, for the purpose of writing the insurance of the insured. Therefore, it is our opinion that the provisions of the above mentioned form are in contravention and violate Section 7 of Article 4682b, Vernon's Annotated Civil Statutes.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED FEB 7, 1941

Yours very truly

Gerald Mann
ATTORNEY GENERAL OF TEXAS

ATTORNEY GENERAL OF TEXAS

By *Arnell Williams*

Arnell Williams
Assistant

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