



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O- 5084

Re: Whether the title to H.B. 251, Chapter 212, Acts of the Regular Session, 42nd Legislature, is sufficient to amend subsection 107 of Article 7047 R.C.S., 1925; and related questions.

In your letter of January 5, 1943, you request the opinion of this department as to the constitutionality of the above captioned amendatory act. According to such letter, certain general and special agents of life insurance companies are refusing to pay their occupation taxes, and are contending that H.B. 251 above is unconstitutional because the title thereto is defective.

HISTORY OF THE ACT

In 1895, by H.B. 412, Acts of the Regular Session, 24th Legislature, the first occupation tax upon insurance agents was passed in Texas. It provided for an occupation tax upon general and local agents of life, fire, marine, and accident insurance companies; also upon local agents of industrial life insurance companies.

In the Revised Statutes of 1895, Article 5049 was substantially the same as H.B. 412 above, except it provided for an occupation tax upon certain insurance companies doing business in this State in addition to the tax upon certain agents thereof.

At the First Called Session of the 25th Legislature of 1897, Article 5049 was amended and "general adjusters of losses . . . of life, fire, marine and accident

Honorable George H. Sheppard, Page 2

insurance companies" were included for the first time. The balance of the Act was substantially the same as before.

In the Revised Statutes of 1911, Article 7355 (Section 20) provided for an occupation tax upon general adjusters of losses, or agents of fire and marine insurance companies. "Local agents" were not taxed, neither were "general adjusters of losses, nor agents" of life or accident insurance companies.

In the Revised Statutes of 1925, Section 20 of Article 7355 (1911) was carried forward in identical wording as Section 10 of Article 7047(1925).

In 1931, H.B. 251, Acts of the Regular Session, 42nd Legislature, amended Section 10 of Article 7047(1925) as follows:

(1) Said Section 10 was divided into subsections (a) and (b), reading as follows:

"(a) Insurance Adjusters.-From every insurance adjuster, who adjusts insurance losses, whether employed by an insurance company, or companies, or by an adjustment bureau, or by the insured whether a member of a firm, association of persons, or whether an agent or officer of such firm, association, or of any corporation, whether the charge therefor be paid by the insured or the insurer, an annual tax of Fifty Dollars (\$50.00).

"(b) General and Special Agents.- From each and every person acting as a general or special agent of every insurance company that may transact any insurance business in this State, an annual occupation tax of Twenty-five Dollars (\$25.00). By "general agent" as used herein, is meant any person, whether a member of a firm or association, or as representative or employee, who may exercise a general supervision over the business of any insurance company in this State, or over local agencies of such insurance companies, or any person supervising such business, or any part thereof, as contradistinguished

Honorable George H. Sheppard, Page 3

from a local agent or local agency. By "special agent" as used herein, is meant any person, whether a member of a firm or association, or as representative or employee, who may exercise supervision in any executive capacity, other than of an officer of such company, over the business of any insurance company in this State, or over the adjustment of losses or the placing of risks. But one payment of the annual occupation tax herein imposed shall be required of any one person under this subdivision. Acts 1897, 1st C.S., p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212 § 1."

(2) Other changes were as follows:

(a) "General adjusters of losses of fire and marine insurance companies" was changed to "every insurance adjuster, who adjusts insurance losses", with no reference to fire and marine insurance companies.

(b) "General agents of fire and marine insurance companies" was changed to general agents "of every insurance company".

(c) "Special Agents" of every insurance company was inserted into the law for the first time.

The caption or title of the Act reads, in so far as pertinent here, as follows:

"An Act amending subsections 4, 6, 7, 8, 9, 10, 12, 15, 23 of Article 7047"

Section 35, Article 3 of our Constitution reads as follows:

"No bill, (except general appropriation bills, which may embrace the various subjects

Honorable George H. Sheppard, Page 4

and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

It is contended that the title to H.B. 251 above is defective and violative of Section 35, Article 3 of our Constitution. The question is:

Whether the title to the Amendatory Act (H.B. 251 above) is sufficient to allow the amendment of subsection 10b of Article 7047, which provides for an occupation tax only upon general agents of fire and marine insurance companies, to cover general agents of every insurance company, and special agents of every insurance company?

It should be observed that "special agents" of every insurance company was inserted into the law for the first time by such amendatory Act, and "general adjusters of losses" and "general agents" had been previously confined to such adjusters and agents "of fire and marine insurance companies".

The purpose of Section 35, Article 3 of our Constitution, and similar constitutional provisions elsewhere, is well expressed in Cooley's "Constitutional Limitations", Volume 1, page 300 (Eighth Edition):

"First, to prevent 'hedge-podge' or 'log-rolling' legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles give no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and

Honorable George H. Sheppard, Page 5

third, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have an opportunity of being heard thereon, by petition or otherwise, if they shall so desire."

For Texas cases to the same effect, see citations in 39 Texas Jur. p. 77.

It is the settled rule that "a liberal construction will be applied in determining whether or not a statute violates Section 35, Article 3 of the Constitution, and, where the provisions are germane in any degree, the law will be upheld". Katz v. State, 54 S.W. (2d) 130.

It has been said in Gibson v. Sterrett, 144 S.W. 1189, that "it is sufficient compliance with the constitutional requirement if the subject-matter of the amendment is germane to the subject matter of the original act, and is within the title of that Act".

Applying these principles to our factual situation, we believe the title to the amendatory act insufficient to levy a valid occupation tax upon any persons not "general agents of fire and marine insurance companies", for the following reasons:

(a) INSUFFICIENCY OF TITLE:

The title to the amendatory act is copied above. That portion of the amendatory act which applies to general agents "of every insurance company", and "special agents of every insurance company, is new substantive matter not expressed in the title. We cannot refer to the title of the Original Act to see if its title was broad enough to include such new substantive matter, as suggested by Gibson v. Sterrett, supra, because the original act (Article 7047, R.C.S., 1925) was copied from the identical wording of Article 7355 of the Revised Statutes of 1911. Since both of

Honorable George H. Sheppard, Page 6

these Articles appear in Revised Statutes, it was not necessary for either of them to have a title, but it is significant that Article 7355 (1911) limits the prior statutes to the subject of "fire and marine insurance companies". It cannot be said, therefore, that the new substantive matter contained in the amendatory act is expressed either in the title of the amendment or the amended act.

(b) NOTICE:

In *Sutherland v. Board of Trustees*, 261 S.W. 489, the true test to be applied in cases of this character is said to be:

"Does the title fairly give notice by its recitals, to all persons concerned, of the subject-matter of the Act?"

No one would seriously contend that the title in question gave notice to anyone not a general agent of a fire and marine insurance company. Especially is this true when we consider that no attempt had been made from 1911 to 1931 to levy an occupation tax upon agents of insurance companies other than "fire and marine insurance companies".

(c) AMENDMENT GERMANE?

In our opinion the most difficult question is whether the amendment is germane to the subject matter of the amended act "in any degree". The main subject matter of the original act was an occupation tax upon general agents of fire and marine insurance companies. Was there a sufficiently close connection in subject matter between the original act and the amendatory act, which embraced general and special agents of every insurance company, to sustain the amendment? We think not. Our opinion would be different if the title to the original act involved the subject of insurance agents generally, and the body of the Act was limited to "fire and marine insurance companies", but since there was no title to the original Act (it appearing in a revised edition of the statutes), and the subject matter of the prior acts were changed and limited to "fire and marine insurance companies" by such revisions, we are compelled to say that the provisions of the amendatory

Honorable George H. Sheppard, Page 7

act are not sufficiently connected with the main subject matter of the amended act to sustain the amendments.

Subsection 23 of the amendatory act in question was held void in Ex parte Turner, 55 S.W. (2d) 833, because it contained new substantive matter not germane or pertinent to that contained in subsection 23 of Article 7047, and was legislation upon a subject not expressed in the caption to the act. There the subsection of the amendatory act made no reference to anything contained in the original subsection, and was in no way germane to anything contained in such subsection, but related to an entirely different subject matter. It presents a stronger factual situation than we have here, but it is submitted that this precedent is very persuasive, if not controlling.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Thos. B. Duggan*
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Assistant

APPROVED FEB 19, 1945

Gerald C. Mann

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