



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GROVER SELLERS
~~WALTER H. HULL~~
ATTORNEY GENERAL

September 5, 1944

Honorable O. P. Lockhart, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. 0-6170

Re: Whether a mutual assessment health and accident company operating under Chap. 6, Title 78, Vernon's Annotated Civil Statutes, can amend its by-laws to permit proxy voting at all members' meetings.

Your letter of August 21, 1944, requesting the opinion of this department on the question stated therein, is as follows:

"Enclosed you will please see copy of an order of the Board of Insurance Commissioners dated July 11, 1939, passed under authority of Section 25 of Article 5068-1. You will observe that under Sections 1 and 2 of the above Article is construed by the Board to apply to mutual assessment health and accident companies operated under Chapter 6, Title 78, now repealed.

"Section 18 states: 'Proxy voting will be permitted if an association's by-laws provide for it.' Please advise me whether a mutual assessment health and accident company operating under Chapter 6 may amend its by-laws to permit proxy voting at all members' meetings, Article 4789 of Chapter 6 to the contrary notwithstanding."

Chapter 6, Title 78, Vernon's Annotated Civil Statutes, was repealed in 1929 by the 41st Legislature, First Called Session, page 90, Chapter 40, Section 18, as amended by Acts 1929, 41st Legislature, Second Called Session, page 99, Chapter 60, Section 1.

Article 4860a-18, Vernon's Annotated Civil Statutes, provides:

"Chapters 5, 6, 9, 12, 13, 14, and 15, of Title 15, of the Revised Civil Statutes of 1925,

and all other laws or parts of laws in conflict with the provisions of this Act, are hereby repealed; provided, that such repeal and the provisions of this Act will not apply to or affect any company or association of this State now doing business under the laws repealed, and they shall continue to be governed by the regulatory provisions of such laws. Any company organized and transacting business under any of the laws repealed by this Act, or any general law of this State, other than Article 8308, or any other article under Title 130, Revised Civil Statutes, of Texas, 1925, may, however, by resolution of its Board of Directors, duly approved by the majority of the members, at a meeting specifically called for that purpose, and duly certified to by the president and secretary, and filed with the Board of Insurance Commissioners, elect to adopt and become subject to the provisions of this Act, in lieu of any act or acts theretofore governing such company or association.

"Any company or association so electing and fully complying with this Act, may thereafter effect such kinds of insurance as is authorized by this Act, and specified in its articles of association then in force, or as then or thereafter amended, together with such additional kinds of insurance as are specified in such resolution and authorized by this Act."

Section 1 of Art. 5068-1, V.A.C.S., provides:

"This Act shall apply to and embrace all insurance companies and associations, whether incorporated or not, which issue policies or certificates of insurance on the lives of persons, or provide health and accident benefit, upon the so-called mutual and assessment plan, or whose funds are derived from the assessments upon its policy-holders or members, and shall, in fact, apply to all life, health, accident companies or associations which do not come within the provisions of Chapter 3, Chapter 5, Chapter 7, Chapter 8, Chapter 9, Chapter 18, Chapter 19, or Chapter 20, Title 58, of the Revised Civil Statutes of Texas. This Act shall include local mutual aid associations; statewide life, or life, health and accident associations; mutual assessment life, health and accident associations, burial associations; and similar concerns, for whatsoever name or class

designated, whether specifically named herein or not.

"This Act does not enlarge the powers or rights of any of such associations nor enlarge the scope of their legal or corporate existence; or authorize the creation of any association or corporation to do any of the sorts of businesses above indicated, for such creation is not now specifically permitted by law. The laws prohibiting or limiting such creation and exercise of corporate powers are not affected by this Act."

Article 4789, Chapter 6, Title 78, Vernon's Annotated Civil Statutes, provides:

"Such corporations shall issue no certificate of stock, shall declare no dividends, shall pay no profits, and the salaries of all officers shall be designated in its by-laws. Such by-laws shall provide for annual members' meetings, in which each member shall be entitled to vote, only in person, the amount of insurance held."

It will be noted that under Article 4860a-18, that companies or associations operating under Chapter 6, Title 78, Vernon's Annotated Civil Statutes, the repeal of said Chapter 6 does not affect any company or association that was doing business under said law when it was repealed, and that such companies or associations shall continue to be governed by the regulatory provisions of such laws. Article 4718, V.A.C.S., among other things, provides in effect that each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. Article 4803, V.A.C.S., among other things, provides in effect that any policy holder may execute his proxy authorizing and entitling the holder to exercise his voting powers unless such proxy shall be revoked previous to such annual meeting. Articles 4718 and 4803 are not applicable to companies operating under Chapter 6, Title 78, V.A.C.S. However, Article 4789 authorizes members to vote only in person. It will be noted that Article 5068-1, V.A.C.S., expressly provides that the Act (Senate Bill 135, Acts Regular Session, 46th Legislature, 1939), does not enlarge the powers or rights of any such association or enlarge the scope of their legal or corporate existence nor authorize the creation of any association, or corporation to do any of the sorts of businesses above indicated, where such creation is not now specifically created by law. It is further provided that the laws prohibiting or limiting such creation and the exercise of corporate powers are not affected by the Act.

Section 25 of Article 5068-1, Vernon's Annotated Civil Statutes, authorizes the Board of Insurance Commissioners to promulgate reasonable rules and regulations to carry out the purposes of the Act. (Senate Bill 135, Supra.)

Section 18, of said Article 5068-1, V.A.C.S., provides:

"The by-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors, but only at meetings called for that purpose or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered, must be mailed to all members. Such notices must contain full copies of the proposed changes in the by-laws and fair explanations of the intent and effect thereof."

Section 18, supra, is a general provision authorizing associations and companies governed by Article 5068-1, V.A.C.S., to amend their by-laws in compliance with said section. However, neither this section, nor any other section thereof, authorizes companies or associations operating under Chapter 6, Title 78, V.A.C.S., to amend their by-laws providing that members of such companies or associations can vote by proxy. As above stated, Art. 4789, Chapter 6, Title 78, V.A.C.S., which is applicable to companies operating under Chapter 6, expressly authorizes members to vote only in person.

Section 18, of an order of the Board of Insurance Commissioners, dated July 11, 1939, provides, in part:

". . . . Proxy voting will be permitted if the associations' by-laws provide for it. If some officer of the association holds proxies of the members, the notice of any meeting where the proxies may be voted must clearly remind the policy holder of the proxy and advise him that it will be voted unless rescinded by the member."

Generally speaking, the Board of Insurance Commissioners may exercise only such authority as is conferred upon it by law in clear and unmistakable terms and the same will not be construed as being conferred by implication. (Humble Oil and Refining Company vs. Railroad Commission of Texas, 128 S.W. 2d, 9; Commercial Standard Insurance Company vs. Board of Insurance Commissioners of Texas, 34 S.W. 2d, 343; Board of Insurance Commis-

sioners of Texas vs. Guardian Life Insurance Company of Texas, et al, 180 S.W. 2d, 906).

We fail to find any law authorizing the Board of Insurance Commissioners to pass an order permitting members of companies or associations operating under Chapter 6, Title 78, V.A.C.S., to vote by proxy. There is no statute that we can find applicable to associations or companies operating under Chapter 6 authorizing the members thereof to vote by proxy. However, as heretofore mentioned, Art. 4789, which is applicable to such associations or companies, expressly authorizes the members of said associations or companies to vote only in person. Therefore, it is our opinion that mutual assessment, health and accident companies or associations operating under Chapter 6, Title 78, Vernon's Annotated Civil Statutes, cannot legally amend their by-laws to permit proxy voting by the members of such companies or associations.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By: s/Ardell Williams
Ardell Williams
Assistant

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APPROVED SEP 8, 1944
s/Geo. P. Blackburn
(Acting) ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman