



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

February 5, 1947

Honorable Jesse James  
State Treasurer  
Austin, Texas

Opinion No. V-25

Re: Article 696, Revised  
Civil Statutes, National  
Savings Investment Co.,  
Sam Houston Underwriters,  
Inc., Sterling National  
Co., further procedure  
and disposition of  
securities on deposit  
of above named companies.

Dear Sir:

You request the opinion of this department in your letters of November 14, 1946, and January 3, 1947, respectively, upon the questions therein presented, which for a statement of facts we quote as follows:

"Our records show that we hold as custodian securities deposited by the above named companies under provisions of Article 696, as listed below:

National Savings Investment Co.  
Dallas, Texas  
Deposited on April 11, 1930  
City of Borger Funding Bonds  
Nos. 57/62 @ \$1,000.00 each \$6,000.00

Sam Houston Underwriters, Inc.  
Ranger, Texas  
Deposited on August 13, 1931  
Sam Houston Life Ins. Co. Stock  
Certificate #128 for 400 shs. &  
Certificate #149 for 100 shs. at  
\$10.00 per share 5,000.00

Sterling National Company  
Houston, Texas  
Deposited on April 3, 1935  
Sterling Nat'l Life Ins. Co.  
Stock, Certificate #6 for 500  
shs. at \$10.00 per share 5,000.00

"To date, no other deposits have been made by said companies as required under Article 696. On September 26, 1946, we wrote the Secretary of State asking if these companies had been issued charters to do business in Texas, and if so, to please furnish us with the correct addresses of each. We received a reply from the Secretary of State October 1, 1946, giving no post office addresses, and quoted in part as follows:

"We find that NATIONAL SAVINGS INVESTMENT COMPANY, Dallas, Texas has been forfeited July 2, 1932; SAM HOUSTON UNDERWRITERS, Inc., Ranger, Texas was forfeited July 2, 1932 because the Franchise Tax was not paid and was also forfeited April 25, 1933 because of failure to make proof of final payment; STERLING NATIONAL COMPANY, Houston, Texas, was forfeited July 2, 1942."

"On October 14, 1946, we wrote to each of the companies named herein regarding the requirements of Article 696. Our letters to National Savings Investment Company and Sam Houston Underwriters, Inc., were returned unclaimed, and no answer was received from Sterling National Company. Also no replies were received from the verification letters sent out by the State Auditor's Office in connection with the audit of this department.

"Therefore, in accordance with the provisions of Article 696, we kindly request your written advice regarding further procedure and disposition of securities on deposit."

"January 3, 1947

"On November 14, 1946, we requested your written opinion on the further procedure and disposition of securities on deposit with this Department under provisions of Article 696 for National Savings Investment Company, Sam Houston Underwriters, Inc., and Sterling National Co.

"In conversation with C. K. Richards, it was suggested by him that we try to obtain more information concerning said companies, and accordingly, wrote several letters but to no avail.

"Therefore, we hand you herewith copies and photostats of all information which we have been able to obtain, and await your further advice on these matters."

Concretely, your problem is what disposition, if any, you should make at this time of the securities deposited by the respective companies mentioned in your letter, pursuant to the provisions of Article 696, R.C.S.

You are governed in this matter solely by the provisions of Articles 696 to 700, inclusive, R. C. S., as we shall presently point out. These statutory provisions are as follows:

"Article 696. Each corporation, company or individual, doing business in this State as a bond investment company, or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, shall deposit with the State Treasurer, in cash or securities approved by said Treasurer, the sum of five thousand dollars, and shall deposit semi-annually with said Treasurer, in cash or securities, to be approved by said officer, ten per cent of all net premiums received until the sum deposited amounts to one hundred thousand dollars.

"Article 697. If any such domestic corporation, shall fail, for sixty days after its organization, to make with the State Treasurer the deposit required by this title, it shall be considered to have forfeited its charter; and the Attorney General shall upon information thereof, bring suit in the name of the State to have such charter or certificate of incorporation declared forfeited, and the court, upon so finding, shall declare such charter forfeited and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall out of such assets make equitable compensation for the receiver.

"Article 698. In case of the failure of any such company, the district court of the county in which the principal office is located, upon the application of one or more shareholders,

shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts, and distribute its assets, using therefor, upon the order of the court, the deposit previously made with the State Treasurer to secure the shareholders. Said Treasurer is authorized to pay out such deposit upon the warrant of the Comptroller in accordance with requisitions made upon the Comptroller by said receiver, approved by the court.

"Article 699. On request of any such company, the State Treasurer is authorized to permit such company to interchange cash for the securities or securities for the cash deposited by such company under the provisions of this title with said Treasurer, such securities always to be approved by said Treasurer on the written advice of the Attorney General.

"Article 700. If any such company shall cease to do business in this State and satisfy the Comptroller and the Attorney General that it has no liabilities in this State, the Comptroller shall issue his warrant to the State Treasurer; and said Treasurer upon such warrant of the Comptroller, shall return to such company the cash or securities deposited by it under the provisions of this title."

Justice Sharp, of the Supreme Court in the case of Bankers Union Life Insurance Company v. Sheppard, 117 S. W. 2d 770, 116 A. L. R. 961, stated the main objective of these statutory provisions in language as follows:

"(1) To require each corporation doing business in this State as a bond investment company to place cash or certain securities with the State Treasurer, in the sum of \$5,000, as a deposit; and to deposit semi-annually ten per cent. of all net profits received, until the sum of \$100,000 is deposited.

"(2) To require the Attorney General, in the event any such corporation shall fail to make such deposit as required, to bring suit to have the charter of such company declared forfeited, and to have a receiver appointed for

such company, whose duty it shall be, under the orders of the court, to distribute to the shareholders the assets of the company.

"(3) To provide, in case of the failure of any such company, that upon application of one or more shareholders the district court shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts, and distribute its assets, using therefor, upon the order of the court, the deposit previously made with the State Treasurer.

"(4) To permit the interchange of the deposit.

"(5) To provide, in the event any such company shall cease to do business in this State and shall satisfy the Comptroller and the Attorney General that it has no liabilities in this State, that the Comptroller shall issue his warrant to the State Treasurer, and said Treasurer upon such warrant shall return to such company the cash or securities deposited by it under the provisions of law."

It will be observed that Article 696 describes how the deposit shall be made. Articles 697 and 698 provide for the appointment of a receiver in the event that the company fails to make such a deposit, or in the event of the failure of such company. It does not appear from the information before us that any receivership proceedings have, up to this time, been instituted as to any of the companies in question, hence Articles 697 and 698 are not applicable and need not, for the purpose of this opinion, be further considered. The same is true of Article 699 which provides for interchange and substitutions of securities. Whether or not the question of solvency or insolvency of these companies is now present or may arise in the future, we do not find it necessary to decide, nor could we decide this question upon the facts submitted. It does appear, however, that their right to continue their corporate activities have been forfeited for failure to pay franchise taxes or other reasons, and that they are not now active corporate concerns, but the fact still remains that they are not in receivership.

There remains, therefore, the question of

whether you are authorized under the provisions of Art. 700, supra, to dispose of these securities as therein provided. This Article does not purport to provide that the deposit made under Article 696 be retained for the benefit of the shareholders of the corporations. Bankers Union Life Insurance Co. v. Sheppard, supra. It is to be returned by the State Treasurer upon the certificate of the Comptroller of Public Accounts only upon a showing that the depositor has no liabilities in this State which have not been fully discharged, and this must be to the satisfaction of the Comptroller and the Attorney General. We think the burden rests upon the shareholders or the parties claiming the return of such securities to present sufficient evidence and information to the Comptroller and the Attorney General to justify them in reaching a conclusion as to whether or not the provisions of Article 700 have been met.

From the information contained in your opinion request, it does not appear that any demand has been made for the return of these securities by any party authorized under the statute to make a demand and receive them, or that there has heretofore been presented to the Comptroller and the Attorney General any information upon which the Attorney General could recommend to the Comptroller the issuance of his certificate upon you for the disposition of the securities to anyone at this time, and until this has been done, you are authorized to retain these securities as you have in the past.

We think the case of Bankers Union Life Insurance Company v. Sheppard, supra, affords a safe guide for us in this matter; and while in that case the Comptroller was ordered to return the securities by a mandamus proceeding instituted for that purpose, the undisputed facts in that case justified the court's action. But here we are not able to say that the facts justify you in taking any action in regard to these securities, other than to keep them securely as you have in the past until receivership proceedings are instituted as provided for in Articles 697 and 698, supra, or until a proper showing has been made to the Comptroller and Attorney General as provided for in Article 700, supra, which would justify the Comptroller in issuing his certificate for your direction in the disposition of the securities.

We take your letter, however, as sufficient notice to this Department to justify appropriate legal action under Articles 697-698 or 7095, R. C. S., and expect to proceed accordingly. You will in due course be ad-

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vised as to the further disposition of these securities upon the culmination of our efforts to clear this matter up by appropriate legal action.

SUMMARY

The State Treasurer is not authorized to return securities deposited with him by corporations doing business in this State as a bond investment company, or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, as required by Article 696, R.C.S., except in receivership proceedings as provided for in Articles 697, 698 or 7095, R.C.S., or upon a showing satisfactory to the Comptroller and the Attorney General that the corporation has ceased to do business in the State and has no liabilities unsatisfied as required by Article 700, R. C. S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

  
L. P. Lollar  
Assistant

APPROVED FEB. 5, 1947

  
ATTORNEY GENERAL

LPL:AMM:jrb

Approved Opinion Committee  
By BWB, Chairman