



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

May 28, 1969

Honorable Jesse James
State Treasurer
Capitol Building
Austin, Texas

Opinion No. (M-406)

Re: Whether the State Treasurer is required to publish the information required in Section 5, Article 4.08, Texas Insurance Code, under the stated circumstances.

Dear Mr. James:

Your request for an opinion involves Section 5 of Article 4.08, Texas Insurance Code, which requires that the State Treasurer on or before the first day of September following the receiving of the reports required under Section 4 of said Article, shall cause to be published notices based on the information contained in such reports. The State Treasurer is requested to cause all items in such reports that are in the sum of \$50.00 or more to be published. Subsection (c) of Section 5 reads, in part, as follows: "It shall not be obligatory upon the State Treasurer to publish any item of less than Fifty Dollars (\$50) in such notice, unless the State Treasurer deems such publication to be in the public interest."

Your question asks whether the State Treasurer is required to publish the information required in Section 5, Article 4.08, Texas Insurance Code, under the following circumstances:

"An out of state insurance company has tendered reports required under the provisions of Article 4.08, Texas Insurance Code, for the years 1965 through 1968, including in such reports many items over \$50.00 each. In each instance the subject company has declined to forward any remittance, claiming Statutes of Limitations as the reason for non-payment. The current year's report has been received reporting a total amount in excess of \$24,000.00, including a great many items over \$50.00."

Article 4.08, Section 5, is as follows:

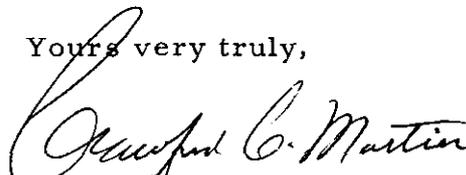
"On or before the first day of September following the making of such reports under Section 4, the State Treasurer shall cause to be published notices based on the information contained in such reports and entitled: "NOTICE OF CERTAIN UNCLAIMED FUNDS HELD AND OWING BY LIFE INSURANCE COMPANIES. " Such a notice shall be published once in a newspaper published or having a general circulation in each county of this state in which is located the last known address of a person appearing to be entitled to such funds. "

The above quoted Section 5 does not permit any discretion on the part of the State Treasurer with regard to the publication of the information required in Section 4 of Article 4.08. Said Section 5 makes it mandatory upon the State Treasurer to publish notices based upon the information contained in the reports required by Section 4. Therefore, it is the opinion of this office that the State Treasurer must comply with the publication requirements of Section 5, Article 4.08 under the circumstances outlined.

SUMMARY

When an insurance company complies with Article 4.08, Section 4, Texas Insurance Code, the State Treasurer is obligated to publish the notice required by Section 5 of 4.08, even though at the time of filing said reports the insurance company denies liability for the funds set out in the report on the basis that any claim against the funds are barred by the statute of limitations.

Yours very truly,


CRAWFORD C. MARTIN
Attorney General of Texas

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