



**THE ATTORNEY GENERAL  
OF TEXAS**

**GERALD C. MANN**

~~SECRET~~  
ATTORNEY GENERAL

**AUSTIN 11, TEXAS**

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

Dear Sir:

Opinion No. 0-5461

Re: Insurance companies organized  
under the laws of the Republic  
of Mexico doing business in  
Texas.

Your letter requesting the opinion of this department  
on the questions stated therein reads in part as follows:

"We ask your opinion upon the following  
legal questions, which we certify are not moot  
or abstract or premature but are actually con-  
fronting this Department at this time in the  
discharge of our official duties:

"1. Prior to May 10, 1943, the effective  
date of Article 5012a, (Acts 1943, 48th Leg.,  
p. 436, ch. 295, S.B. 357), did the provisions  
of Article 4686, sec. 6 of Article 4859f, and  
Articles 5054-5062b, inclusive, of Vernon's  
Texas Civil Statutes, and Articles 568-572, in-  
clusive, of the Penal Code, both as amended and  
supplemented to that date, or any other appli-  
cable statutes or legal principles, prohibit  
(a) licensed and/or (b) unlicensed insurance  
agents in Texas from issuing and delivering in  
this State insurance policies for insurance  
companies domiciled in the Republic of Mexico  
(assuming such companies to be reputable and  
financially sound) covering automobile risks  
of all types, effective and operative only  
upon persons and property while physically  
situated within Mexico; such Mexican companies  
not having complied with and obtained certifi-  
cates of authority to conduct insurance business  
in Texas under the laws of this State?

"2. Is Article 5012a aforesaid, alone or  
in conjunction with the other laws of this State  
referred to in question 1, above, permissive in

the sense that it merely authorizes Mexican insurance companies at their option to domesticate and obtain certificates of authority to conduct the insurance business in this State if they so desire, being free to conduct in Texas the activities described in question 1 if they do not so obtain certificates of authority, or is Article 5012a mandatory in the sense that it requires Mexican companies in comply with its requirements as a condition precedent to exercising in Texas the privileges described in question 1?

"3. If question 2 be answered to the effect that Article 5012a is mandatory in the sense mentioned, then, as thus construed and applied, is Article 5012a or any part or provision thereof void or inoperative as applied to the activities of such Mexican companies mentioned in question 1, as being violative of any provision or provisions of the constitutions of Texas and of the United States; and if so, which of the statutory provisions violates which of such constitutional provisions?"

Senate Bill No. 357, Acts of the 48th Legislature, Regular Session, 1943, provides:

"Section 1. Any insurance carrier lawfully organized under the laws of the Republic of Mexico, or under the laws of any state thereof, and duly authorized by such laws and by its charter or articles of association and by current license of the appropriate insurance regulatory authority of such Republic or any state thereof to underwrite risks of the kinds and in the circumstances hereinafter mentioned, may issue in the State of Texas, under license of the Board of Insurance Commissioners of Texas, policies of insurance affording any and all kinds of automobile coverage, accident insurance and/or other casualty coverage, upon persons and/or personal property, to be in force only while such persons and/or personal property shall be physically within the boundaries of the Republic of Mexico, by complying with the following requirements:

"(a) Such insurance carrier shall file with the Board of Insurance Commissioners of the State of Texas (called Board) a written application for certificate to do business in this state, accom-

panied by a correct English translation of its charter and by-laws, duly certified by two of its principal officers and by the insurance regulatory officials under whose supervision it operates in the Republic of Mexico, and of all of its policy forms, application forms, claim forms, and other forms of every nature which it uses or expects to use in underwriting the coverage hereby authorized to be written in Texas, all of which shall be subject to the approval of such Board.

"(b) Before admission, and annually thereafter, such carrier shall also file with such Board a photostatic copy of its current license or licenses to operate in the Republic of Mexico, and shall file a copy of its latest financial reports or statements, and of the latest examination reports of its affairs and financial condition by the insurance regulatory authorities under which it operates in Mexico.

"(c) Such carrier shall deposit with the Treasurer of the State of Texas at least Twenty-five Thousand (\$25,000.00) Dollars in lawful money of the United States or in securities eligible for other casualty insurers licensed in Texas and approved by such Board, which deposit shall be liable for all lawful claims and final judgments against such insurance carrier, including taxes due the State of Texas, and policy claims and other debts and obligations incurred in the course of operations hereunder as provided herein, and such deposit shall be kept replenished from time to time with like cash or approved securities to maintain a minimum total deposit of Twenty-five Thousand (\$25,000.00) Dollars. Such deposit or the unincumbered balance thereof shall be returned to such carrier with approval of such Board upon withdrawing from the business authorized hereby and upon a showing to such Board that all of its policies written in Texas hereunder have expired or have been cancelled and that all of its claims and obligations upon policies written in this state which would constitute lawful charges against such deposit have been satisfied.

"(d) Such carrier shall file with the Board a power of attorney, in a form designated by the Board, designating an agent or attorney-in-fact upon whom legal process may be served within this

State, which appointment shall continue until revoked and a successor duly appointed by the carrier, and further authorizing service of legal process upon the Chairman of the Board of Insurance Commissioners of Texas and his successors in office as alternate attorney-in-fact for such carrier upon whom service of process may be had in event such process cannot be served upon the designated agent or attorney-in-fact for service as herein provided, upon suits for any alleged liability incurred in operations of the carrier pursuant to this Act, with like effect as if such process had been served personally upon the appropriate persons, representatives or officials of such carrier within its home jurisdiction in the Republic of Mexico. In event process shall be served upon the Chairman of the Board, as provided above, he shall immediately give written notice thereof to such carrier and shall forward such process by registered mail, postage prepaid, and properly addressed to the president of such carrier at its home office as furnished to the Board; and no judgment by default shall be taken in any such cause until after the expiration of forty (40) days after said process and notice shall have been received at the home office of such carrier. Until rebutted, the presumption shall obtain that such notice and process was received at the home office of the carrier on the fifth (5th) day after being deposited in the mail at Austin, Texas, as herein provided. The State Treasurer, upon the approval of the Board, shall pay from the deposit required herein any unsatisfied final judgment obtained against such carrier in any court of competent jurisdiction in Texas based upon such substituted service as authorized herein.

"(e) Such carrier shall pay the State of Texas annually a premium or occupation tax upon its gross premium income from policies issued in Texas according to the reports made to the Board each year, and shall pay such other fees, charges and taxes upon the same basis as like insurers licensed to do the same kinds of business in the State of Texas are required by law to pay; and shall make the same reports as such other licensed carriers, but in such adapted forms as may be prescribed by such Board for such purposes.

"(f) The coverage hereby authorized shall be underwritten only at rates prescribed or approved from time to time by such Board.

"(g) Such Board shall have the authority to examine at any or all times, at the expense of such carrier, the affairs and condition and all books and records of such carrier for the purpose of ascertaining its financial condition and solvency, and its compliance with the applicable laws of this state and of its home jurisdiction.

"(h) Such carrier shall file in English a document executed by its officials expressly accepting the terms of this Act and agreeing that such Board may at any time in its lawful discretion revoke, suspend or refuse to grant or renew the license of such Board to such carrier to conduct in Texas the business hereby authorized, upon a determination by such Board that it is insolvent or in dangerous financial condition, or that it has violated any applicable law of this state or of its home jurisdiction.

"(i) It shall underwrite business in Texas only through its resident Texas agents thereunto duly authorized by it in writing and duly licensed by such Board under the provisions of Article 5062b (Acts 1941, 47th Legislature, page 374, Chapter 212), as the same now exists or as it may be amended hereafter, and the license issued to such Texas agents shall specially authorize them to write for such foreign carriers complying herewith the risk authorized hereby.

"Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed only to the extent of such conflict.

"Sec. 3. If any Section or portion of Section of this Act shall for any reason be declared invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any other Section or portion of Section of this Act.

"Sec. 4. The importance of this legislation, and the immediate and urgent need of the reforms to be effected hereby, create an emergency and an imperative public necessity demanding the suspension

of the Constitutional Rule requiring that all bills be read on three several days in each House, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

Apparently Senate Bill No. 357, supra, was enacted by the State through its Legislature in the exercise of its police power. Generally speaking the police power of the State includes the authority to restrict the pursuit of any business or occupation which is injurious to the health, peace, security or morals of the public, or to the general welfare of society. A business which concerns the public at large calls for an exercise of State regulation. The Legislature may, under the public welfare clause of the State Constitution, enact laws regulating the conduct of lawful business in the State. It may, in the interest and for the protection of the public, prescribe the mode or manner in which business may be conducted or transacted. (See Texas Jurisprudence, Vol. 9, page 514 and Ruling Case Law, Vol. 6, page 217 and the authorities cited therein)

It is stated in Texas Jurisprudence Vol. 9, page 507:

"However, neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort or general welfare of the community. The exercise of the police power upon subjects lying within its scope, in a proper and lawful manner, is due process of law. The decisive question is whether or not the action is sustained by the existence of facts affecting the public welfare sufficient to justify such an application of the police power. The answer to this question determines whether or not the action constitutes due process of law. The mere fact that a law necessary for the welfare of society regulates trade or business, or to some degree operates as a restraint thereon, does not make it unconstitutional."

The police power cannot be used for the purpose alone of raising revenue, the fact that an assessment under police power results in producing revenue does not deprive the assessment of the character of the police regulation. (Brown vs. City of Galveston, 75 S.W. 488)

We quote from Texas Jurisprudence, Vol. 24, page 1311 as follows:

"The State may impose upon nonresident insurance companies such conditions precedent to the right to do business in the state as are deemed proper. Thus the state may require the filing of a power of attorney authorizing service of process upon any agent, officer or representative of the company, the procuring of a certificate from the insurance commissioners, the filing of a bond, and the making of a special deposit as a trust fund for the protection of obligations arising under policies issued within the state. . . . .

"A foreign insurance company which has elected to do business in Texas is deemed to have consented to be governed by the insurance laws of Texas, irrespective of their constitutionality. Such a corporation may not contest the validity of its contracts on the ground that it has not complied with local laws."

A foreign corporation is required, as a condition precedent to the right to do business in the State, to obtain a certificate of authority from the Insurance Commissioner. (Articles 4686, 4687, 4701, 5059 V.A.C.S.)

It is stated in American Jurisprudence Vol. 29, page 70:

"As is true with respect to foreign corporation generally, a state may entirely exclude foreign insurance companies from the transaction of business within its boundaries, or may prescribe such conditions of admission not in conflict with applicable provisions of the Federal and State constitutions as it desires . . . . .

"No insurance company has the right to sell insurance in a state without complying with the statutes embodying such conditions of admission. As a condition of its admission to do an insurance business within the state, a foreign insurance company may, for example, be required to secure a license or certificate allowing it to carry on such business; to possess a specified amount of capital paid-up and unimpaired; to have additional assets sufficient to offset its liabilities, including reserves on its risks; to deposit security for the

performance of its obligations within the state; or to appoint a state official or a local or statutory agent to receive service of process. Likewise, a state may, in effect, impose a condition upon the right of insurance companies to do business therein, by declaring that contracts shall be construed and interpreted according to the law of that state, notwithstanding the statute annuls the provisions of a policy which contravenes the statute . . . . ."

We quote from American Jurisprudence, Vol. 29, page 72 as follows:

"The well-established rule is that the issuance of a policy of insurance is not a transaction of commerce and, although made with a corporation organized or having its office in a state other than that in which the insured resides and in which the interest insured is located, is not interstate commerce. Insurance is not a commodity to be shipped or forwarded from one state to another. As a consequence, the regulation by a state of foreign insurance companies within its borders, or contracts made with such companies within the state, is not invalid as a regulation of interstate commerce. . . . ."

It is stated in American Jurisprudence Volume 29, page 79:

"A state may prescribe that a foreign insurance company may not transact an insurance business within the state except through lawfully authorized or duly licensed agents, or that an agent of such company in order to act for it must be duly licensed; and the rights of one applying for a license to act as agent for such insurance company are contingent upon the compliance of the company with conditions precedent to its right to appoint such an agent . . . . ."

In answer to your first question, it is our opinion that prior to the effective date of Senate Bill 357, supra, no insurance company organized under the laws of the Republic of Mexico had any legal authority to do business in this state without securing a certificate of authority as required by Article 4686, V.A.C.S., and that neither licensed nor unlicensed agents had any authority whatsoever to represent said companies as agents, as the term "insurance agent" is defined by Article

568 of Vernon's Annotated Penal Code and Article 5062b, V.A.C.S.  
(Also see Article 5056, V.A.C.S. and Article 572, V.A.P.C.)

In answer to your second question, you are respectfully advised that it is our opinion that Senate Bill 375, supra, (Article 5012a, V.A.C.S.) is mandatory in the sense that it requires insurance companies organized under the laws of the Republic of Mexico to comply with its provisions as a condition precedent to doing business in this State and unless such company or companies desiring to do business in this State comply with the provisions thereof such company or companies are not authorized to do business in Texas. In other words any insurance company organized under the laws of the Republic of Mexico desiring to do the kind of insurance business as authorized by Senate Bill 357, supra, must comply with the provisions thereof before it can legally engage in such business in this State.

By your third question you inquire as to the constitutionality of said Senate Bill 357, supra, and in answer thereto, you are respectfully advised that it is our opinion that said act does not violate or contravene any provision of the Federal or State constitution that has come to our attention or been considered in connection with your request. In other words we are not aware of any provision of either the Federal or State constitution that is violated by said act.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams  
Ardell Williams  
Assistant

AW:ff:wc

APPROVED SEP 15, 1943  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman