



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

August 7, 1952

Hon. Garland Smith  
Casualty Insurance Commissioner  
Board of Insurance Commissioners  
Austin 14, Texas

Opinion No. V-1497

Re: Legality of designating as title insurance agents persons, firms, or corporations operating abstract plants under lease arrangements.

Dear Mr. Smith:

Your request for an opinion asks whether the Board of Insurance Commissioners should refuse to approve certain contracts between title insurance companies and their "representatives" because the contracts submitted to the Board indicate that the agent is a "lessee" rather than an "owner" of all or a part of abstract plant facilities used or to be used by him in conducting an abstracter's business. The question arises under Article 9.22 of the Insurance Code, which provides as follows:

"Art. 9.22. Rebates and Discounts

"No commissions, rebates, discounts, or other device shall be paid, allowed or permitted by any company, domestic or foreign, doing the business provided for in this chapter, relating to title policies or underwriting contracts; provided this shall not prevent any title company from appointing as its representative in any county any person, firm or corporation owning and operating an abstract plant in such county and making such arrangements for division of premiums as may be approved by the Board." (Emphasis added.)

The question involved in your request is whether a person who leases from another the physical facilities which make up an abstract plant, and with such facilities

conducts an abstract business on his own responsibility, is a "person . . . owning and operating an abstract plant," within the meaning of Article 9.22 of the Insurance Code. In other words, is a person who leases all or a part of such facilities necessarily excluded from the terms of the statute even though he operates the plant and conducts an abstract business therein?

The word "owner" does not have a fixed meaning as a legal term and its significance must be determined from the context and purposes of the statute in which it is used. Realty Trust Co. v. Craddock, 138 Tex. 88, 112 S.W.2d 440, 443 (1938). The term is used in Article 9.22 of the Insurance Code to describe a class of persons to whom a title insurance company may pay commissions, and is in the nature of an exception to the general prohibition against paying commissions or rebates in procuring title insurance business. The policy of the law thus indicated is that commissions may be paid only for the services of an abstracter in marketing title insurance. We cannot conceive of any reason why a lessee in control of abstract plant facilities and actually engaged in the business is not in a position to serve the title insurance company and the public as properly and adequately as a person having a different type of interest or estate in the facilities.

The term "owner" is often construed to include one holding property under lease. Fleishman v. State, 89 Tex. Crim. 259, 231 S.W. 397 (1921); Fort Worth & D.S.P. Ry. Co. v. Judd, 4 S.W.2d 1032, 1035 (Tex. Civ. App. 1928, error dismissed). It is entirely consistent with the purposes of this statute to give the term "owner" such a construction.

We therefore advise that a lessee is not necessarily excluded from the phrase "person . . . owning and operating an abstract plant" as used in Article 9.22, and that the Board should not disapprove such contracts merely because the "representative" may be a lessee as to all or part of the plant facilities.

SUMMARY

A person "owning and operating an abstract plant," authorized by Article 9.22 of the Insurance Code to receive commissions from title insurance companies, may include a person operating such a plant under a lease.

APPROVED:

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NMc/rt

Yours very truly,

PRICE DANIEL  
Attorney General

By   
Ned McDaniel  
Assistant