



STATE OF TENNESSEE
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Re: Interpretive Opinion 04-14, Application of the definition of “controlled business”
as used in Tennessee Code Annotated § 56-35-102(3)

Dear Ms. Paige,

The Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) is in receipt of your request for an interpretive opinion regarding the application of Tennessee title insurance law to a specific set of facts.

Specifically, you have asked whether your client, a licensed title insurance agency (“agency”), would be engaging in business that falls within the definition of “controlled business,” found in Tennessee Code Annotated (“Tenn. Code Ann.”) § 56-35-102(3), and is therefore required to comply with the gross operating revenue limitations in Tenn. Code Ann. § 56-35-131(a)(1), if the agency were to receive the majority of its business from a federal credit union that holds an ownership interest in one (1) of the title agency’s owners.

The facts as understood by the Division are as follows:

Your client, the agency, has two (2) owners, Company A and Company B, each owning fifty percent (50%) of the company. The agency receives the majority of its business from a federal credit union. The federal credit union that provides the majority of the agency’s business owns Company B as its subsidiary.

Whether or not the agency’s operations fall within the definition of “controlled business” dictates whether the limitation placed on gross operating revenues applies. Tenn. Code Ann. § 56-35-131 places requirements on those seeking to obtain a license or certificate of authority to operate as a

title insurance company, agency, or agent. Specifically, Tenn. Code Ann. § 56-35-131(a)(1) requires such applicants to agree that:

- (1) The gross operating revenues for any fiscal year attributable to the placement or issuance of policies or contracts of title insurance derived from all sources of *controlled business* shall not exceed forty percent (40%) of the gross operating revenues of the company, agent or agency[.] [Emphasis added].

The term “controlled business” is specifically defined in Tenn. Code Ann. § 56-35-102(3) to include:

The portion of a title insurance company’s, title insurance agent’s or title insurance agency’s business in this state with which there is *connected in any way*, directly or *indirectly*:

- (A) *Producers of title insurance business who have financial interests in the title insurance company, title insurance agent or title insurance agency;*
- (B) Associates of the producers; or
- (C) Associates who have financial interests in the title insurance company, title insurance agent or title insurance agency[.] [Emphasis added].

Under the proposed business model you have provided, a federal credit union producing the majority of the agency’s business indirectly holds a financial interest in the agency, because the federal credit union’s subsidiary is a fifty percent (50%) owner of the agency. This arrangement falls within the definition of “controlled business,” because the producer of the agency’s title insurance business has an indirect financial interest in the agency. Therefore, the agency is subject to the forty percent (40%) gross operating revenue limitation found in Tenn. Code Ann. § 56-35-131(a)(1).


Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter, and the position stated herein would be void. This letter expresses the Division’s position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division’s prior written consent.

This response by the Division is to a specific fact situation relating to the interpretation of Tenn. Code Ann. § 56-35-102(3) and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this

response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Saul Ewing LLP could result in a different conclusion than asserted herein.

If you have any further questions or concerns regarding this letter, please feel free to contact me at the above number.

Nancy S. Jones,
Deputy Commissioner and General Counsel

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