

OFFICE OF THE ATTORNEY GENERAL



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OCT 15 1985

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Honorable Tharpe Forrester
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Insurance - Insurance Dept. -
Non-profit Corporations - Cor-
porations

A corporation governed by the provisions of §§10-4-100, et seq., Code of Alabama 1975, may own a subsidiary corporation, and sell life insurance products through such subsidiary.

Dear Mr. Forrester:

You have requested of this office an opinion respecting the legal aspects of the sale of life insurance products through a wholly owned subsidiary, by a corporation organized pursuant to §§10-4-100 through 10-4-115, Code of Alabama 1975, as last amended.

In general, non-profit corporations are provided for under the laws of Alabama by §§10-3A-1 through 10-3A-225, Code of Alabama 1975, as last amended (which replaced §§10-3-1 through 10-3-172, per Act 84-290, by which the present statute was enacted). However, §10-4-100, et seq., Code, supra, provides that non-profit corporations "organized for the purpose of establishing, maintaining, and operating a health care service plan...are authorized and shall be governed by the provisions of this Article..." The article in question is Chapter 4, Article 6, which comprises §§10-4-100 through 10-4-115, Code, supra. For convenience

such a corporation may hereinafter be referred to as an Article 6 corporation.

The present Article 6 of Chapter 4 of Title 10, Code, supra, originated as Act 544 of the 1935 Alabama Legislature, and has been amended on six occasions, the last being Act 1041 of the 1973 Legislature. Section 2 of the original act included the following language:

"A certificate [of incorporation] may also contain any other provisions which the incorporators may desire to insert for the regulation of the business and affairs of the corporation, not inconsistent with the provisions of this act."

Act 1041, supra, amended this to read:

"The certificate may also contain any other provisions, not inconsistent with the provisions of this article, which the incorporators may desire to insert for the regulation of the business or affairs of the corporation or which would be permitted non-profit corporations by the Alabama Non-Profit Corporation Act...
(emphasis supplied)

This amendment manifests a clear legislative purpose to include in the powers of an Article 6 corporation any powers of a general non-profit corporation, at the option of its incorporators (or board of directors, under §10-4-105, Code, supra) provided such powers are "not inconsistent with the provisions of" Article 6. The question under consideration is thus resolved into three related questions as follows:

1. As a threshold inquiry, may a non-profit corporation own a profit-making subsidiary;
2. Is the power to own such a subsidiary inconsistent with the provisions of Article 6; and
3. Is the power to sell life insurance products through such a subsidiary inconsistent with the provisions of Article 6?

The answer to the first question is plainly answered in the provisions of §10-3A-4 (formerly §10-3-20), and more specifically §10-3A-20(7), [formerly §10-3-120(7)] in which it is specifically provided that a non-profit corporation may be organized for any lawful purpose (§10-3A-4) and shall have the power "to...own, hold, vote, use,...shares or other interests in...other domestic or foreign corporations, whether for profit or not for profit." [§10-3A-20(7)].

Turning now to the questions involving inconsistency with the provisions of Article 6, we observe that the article is applicable to non-stock corporations organized not for profit for the purpose of establishing, maintaining, and operating a health care service plan. The article provides for incorporation, a board of directors, by-laws and the means of altering or amending the charter. It further requires a certificate of authority and provides for exemptions from license or privilege taxes levied by municipalities or counties.

Article 6 also provides specifications of what health care facilities may participate, and how health care facilities may be selected by holders of certificates. In addition, it provides for the regulation of rates, charges, fees and dues, and grants the Commissioner of Insurance power to examine the affairs of the corporation. The corporation is required to file annual statements, and to deposit certain securities with the State Treasurer in specified amounts. It is also required to obtain from the Commissioner of Insurance a certificate of authority for each of its agents. Decisions of the Commissioner of Insurance made under the provisions of the Article are subject to judicial review, and lastly, the general statutes applying to insurance companies are not applicable to an Article 6 corporation except those provisions regarding annual premium tax.

It does not appear that any of these provisions are inconsistent with the ownership of a subsidiary corporation. Accordingly, it is the opinion of this office that, as a matter of law, an Article 6 corporation may, if so provided by its charter, own a subsidiary corporation.

As noted above, the purpose of an Article 6 corporation is to establish, maintain and operate a health care service plan. Again, the above recitation of the provisions of Article 6 indicates that any activity which would enhance the corporation's basic purpose, and which is lawful, may be

undertaken by the corporation. As we have already determined that the corporation may own a subsidiary, it is obvious that its agents may also be the agents of the subsidiary, so long as their activities as such are intended to and, in fact, do enhance the basic purpose of the Article 6 corporation. Accordingly, while there may be factual circumstances which must be determined on a case-by-case basis by the Commissioner of Insurance, it is the opinion of this office that as a matter of law, it is not inconsistent with the provisions of Article 6 of Chapter 4 of Title 10 of the Code of Alabama 1975, as last amended for an Article 6 corporation to offer life insurance products through a wholly owned subsidiary. Of course, such a subsidiary corporation, as a separate legal entity would be subject to the general statutes that apply to insurance companies, and would not have the benefits of the exemptions in Article 6.

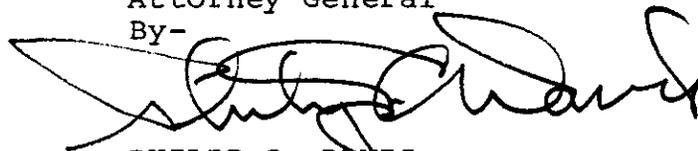
We note that in your request you point out that this matter was addressed in an opinion of this office issued on July 29, 1976. However, in reviewing that opinion, it is unclear what question was, in fact, being addressed, and the opinion appears to go into matters which are more properly left to a trier of fact. Accordingly to the extent that that opinion may conflict with the conclusions of law expressed in this opinion, that opinion is hereby overruled.

I trust that the foregoing will be of assistance to you. If this office can help you in this or any other matter, please let us know.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

By-



PHILIP C. DAVIS
Assistant Attorney General