

1975 WL 28888 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1975

*1 Honorable Howard B. Clark
Chief Insurance Commissioner
Post Office Box 4067
Columbia, South Carolina 29240

Dear Mr. Clark:

Your letter of May 26, 1975, inquires, in substance:

Does Section 37-62 of the Code of Laws, 1962, prohibit the employment of an individual (a) whose wife is the owner of stock in an insurance company or the owner of stock in a holding company which, in turn, owns stock in an insurance company; or (b) an individual who owns stock in an insurance company or a holding company (having an interest in an insurance company), but who places such stock in an irrevocable trust for the benefit of his wife or children?

It is my opinion that the ownership by a wife of stock in an insurance company does not per se have any effect upon the husband's employment by the Department of Insurance unless there are some extrinsic circumstances, of which I am unaware, which would have the effect of vesting some interest in the husband. The 'direct or indirect' interest in the business of an insurer which would preclude an individual from being employed with the Department of Insurance must, in my opinion, be an interest relating to or held by him but the mere ownership of insurance stock by the wife is not such a direct or indirect interest in the business of that insurer as to preclude employment of the husband by the Department of Insurance in all circumstances.

I feel that a good faith showing by a full and complete disclosure of all interests which a potential employee of the Department may have in an insurance company, including ownership by close members of his family, would go far toward establishing that the individual is divorcing himself from any interest, direct or indirect, in any insurance company. Such a full disclosure could be and should be retained by the Commission for its guidance. Full disclosure by the prospective employee of all of his holdings and financial arrangements to the Commission would evidence good faith and would tend to remove any question as to the applicability of the conflict of interest statute.

It is therefore my opinion that an individual does not retain a direct or indirect interest in an insurance company in which he owns stock if he conveys such stock to a member of his family. There may be extrinsic circumstances which would necessarily require separate and individual consideration in each instance where some arrangement other than complete divestiture of interest is made.

The law must be given a realistic construction and undoubtedly a large number of the more highly skilled and knowledgeable of the employees of the Department of Insurance have a background in insurance circles. To require that, in order to be employed by the Department of Insurance, they divest themselves of stock which they own in an insurance company and convey it to someone other than members of their family, would be to place a construction and application upon the statute, which the Legislature hardly intended.

*2 With regard to the execution of an irrevocable trust, it is my opinion that this would not divest the owner of the stock of an interest, direct or indirect, in the company which the stock represents.

Further consideration of this problem will be made in cases where the trust is for the lifetime of the beneficiary. In such cases, it would seem that the conveyance in trust is tantamount to outright conveyance in fee. I suggest that each conveyance in trust be separately considered as the occasion may arise.

Very truly yours,

Daniel R. McLeod
Attorney General

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