



Texas Department of Insurance
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COMMISSIONER'S BULLETIN #B-0041-07

October 17, 2007

TO: INSURERS, AGENTS, LIFE AND HEALTH INSURANCE COUNSELORS, RISK MANAGERS, AND ALL MUNICIPALITIES, COUNTIES, SCHOOL DISTRICTS, JUNIOR COLLEGE DISTRICTS, AND ALL OTHER LOCAL GOVERNMENTS, AND THE PUBLIC GENERALLY

RE: Use of insurance agents as "agents or brokers of record" by local governments

The Department has received inquiries concerning the employment of insurance agents, as "agents or brokers of record" by local governments. This bulletin is intended to provide guidance that local governments and licensees may find useful when local governments are considering engaging Department licensees for assistance in the purchase of insurance products. The bulletin will also relate prior Attorney General opinions related to "brokers of record" and the differences between an insurance agent license, a Life and Health Insurance Counselor license, and a Risk Manager license.

Summary:

- Texas Attorney General Opinion JC-205 advises that the purchase of insurance is the purchase of personal property, and opines that a school district may not contract with a licensed insurance agent to serve as an agent or broker of record unless the use of a designated agent or broker of record to purchase insurance is a purchasing method that has been expressly authorized by the legislature.
- Local governments and insurance agents are advised that the Texas Legislature has created two licenses, the Life and Health Counselor license and the Risk Manager license, which authorize persons to act solely on behalf of a client in an advisory or counseling capacity when considering the purchase of insurance products.
- The Department cautions insurance agents that Insurance Code §§4005.054 and 4052.055 and 28 Texas Administrative Code §19.1318 contain prohibitions against licensed persons accepting dual compensation for acting as both an insurance agent and life and health counselor or a risk manager for the same service provided to the same client.

Discussion:

Generally the purchase of insurance by a local government is the purchase of personal property and subject to competitive purchasing requirements. (Texas Attorney General Opinion No. JC-205 (2000)) Often a local government, in compliance with applicable statutory competitive purchasing procedures, will issue a request for proposal seeking a "broker" to independently evaluate insurance products for the local government and for which the "broker" will be paid solely by the local government. Although use of the term broker accurately represents a situation where a person represents the customer, local governments are advised that the Texas Department of Insurance does not issue broker licenses. Additionally, Texas insurance agents are not authorized to act independently of the carriers they represent as described by Insurance Code §§4001.051(b), 4001.052, 4001.101, and 4001.201.

This limitation on an insurance agent's ability to procure insurance from any carrier was recognized in Texas Attorney General Opinion No. JC-205 (2000).

"We understand that an insurance agent will be affiliated with a limited number of insurance companies. For this reason, a designated broker of record will not be able to solicit rates on the [junior college] district's behalf from all possible insurance companies for a particular policy. Because the use of a designated broker of record will necessarily limit the number of companies from which the district may purchase insurance, it may foreclose the district's access to the most advantageous rates and terms. (JC-205, Page 2)

With respect to the use of insurance agents in the competitive bidding process, the Attorney General went on in JC-205 to hold:

"Even if a [junior college] district were to instruct a designated broker of record to solicit terms and rates using one of these methods, the district would not have used the method in its truest, most complete form. For this reason, we believe that the legislature must expressly authorize use of designated brokers of record, as it has done in the context of certain municipal insurance purchases." (JC-205, Page 6, referring to Attorney General Opinion DM -070), see also Attorney General Opinion JC-492).

The Department is aware of only two legislatively authorized exceptions with respect to local governments: Local Government Code §262.236, which is limited to counties with populations of greater than 800,000; and Local Government Code §252.024, which authorizes municipalities to engage brokers of record with respect to excess and surplus lines insurance.

Local governments and insurance agents are advised that the Texas Legislature has created two licenses, the Life and Health Counselor license and the Risk Manager license, which authorize persons to act solely on behalf of the client in an advisory or counseling capacity when considering insurance products. Both licenses are available from the Department.

With respect to joint licensure and compensation, local governments and insurance agents are advised that the Texas Insurance Code does not prohibit insurance agents from holding an agent license as well as a life and health counselor and/or a risk manager license. The Department, does, however, caution insurance agents that Insurance Code §4005.054 and §4052.055 and 28 Texas Administrative Code §19.1318 have prohibitions against licensed persons accepting dual compensation for acting as both an insurance agent and a life and health counselor or a risk manager for the same service provided to the same client. Further, if an insurance agent or an insurance agent's affiliate receives compensation from an insured, the insurance agent must make all applicable disclosures required under Insurance Code §4005.004.

Finally, persons holding an insurance agent license, a life and health counselor license, and/or a risk manager license are subject to disciplinary action under Insurance Code §4005.101 and Chapters 82, 83 and 84 for violations of the Insurance Code or Department rules, including engaging in deceptive trade practices under Insurance Chapter 541; acting without, or in excess of, their licensed authority; or engaging in fraudulent or dishonest acts.

Additional information on this Bulletin and the license types described herein may be obtained from Matt Ray, Deputy Commissioner, Licensing Division, 512-463-8917.

Mike Geeslin

Commissioner of Insurance