

OCTOBER 30, 1958

JOHN B. KEENAN, *Commissioner of
Registration and Superintendent
of Elections*
Hall of Records
Newark 2, New Jersey

MEMORANDUM OPINION—P-30

DEAR MR. KEENAN:

You have requested an opinion as to whether a motor vehicle agent who was convicted of the crime of embezzlement is disenfranchised pursuant to the terms of R.S. 19:4-1, as amended. We have been advised that the agent in question pleaded non vult to an indictment charging him with embezzlement under N.J.S. 2A:102-5, embezzlement by employees, agents, consignees, factors, bailees, lodgers or tenants.

R.S. 19:4-1, as amended, deprives certain persons of the right to vote for specific reasons and reads in pertinent part as follows:

“No person shall have the right of suffrage— . . .

“(2) Who was convicted, prior to October 6, 1948, of any of the following designated crimes, that is to say—blasphemy, treason, murder, piracy, arson, rape, sodomy, or the infamous crime against nature, committed with mankind or with beast, polygamy, robbery, conspiracy, forgery, larceny of above the value of \$6.00, perjury or subornation of perjury, unless pardoned or restored by law to the right of suffrage; or

“(3) Who was convicted after October 5, 1948 or shall be convicted, of any of said crimes, except polygamy or larceny above the value of \$6.00, or of bigamy or larceny of above the value of \$20.00, or who shall be convicted of the crime of burglary or of any offense described in chapter 94 of Title 2A, or section 2A:102-1 or section 2A:102-4, of the New Jersey Statutes or described in sections 24:18-4 and 24:18-47 of the Revised Statutes, unless pardoned or restored by law to the right of suffrage. . . .”

As can be seen from the above quoted sections, in order for an individual to be disenfranchised he must have been convicted of one of the crimes or offenses listed in R.S. 19:4-1, as amended. Embezzlement by an agent, pursuant to N.J.S. 2A:102-5, is not such a designated offense. The former motor vehicle agent, to whom you refer, is not within the class of persons who are denied the right of suffrage by R.S. 19:4-1; his conviction was for a violation of N.J.S. 2A:102-5, not N.J.S. 2A:102-1 or 4.

The Legislature is empowered by Article 2, Sec. 7, par. 7 of the New Jersey Constitution to deprive persons of their right of suffrage upon conviction of such crimes as the Legislature shall designate. This right of suffrage has been described by Justice Heher in *Gangemi v. Berry*, 25 N.J. 1 (1957) on page 5 of his opinion as a

“. . . basic right . . . , a civil and political franchise—of the very essence of our democratic process—that is to be liberally and not strictly construed to promote and not to defeat or impede the essential design of the organic law”

Consequently, since R.S. 19:4-1, as amended, deprives certain individuals of this basic right, it is necessary to strictly construe said statute so that only those persons convicted of crimes actually designated in R.S. 19:4-1, as amended, will be disenfranchised. You are, therefore, advised that the motor vehicle agent in question is not deprived of his right to vote as a result of his conviction for a violation of N.J.S. 2A:102-5.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

OCTOBER 30, 1958

HONORABLE CHARLES R. HOWELL, *Commissioner*
Department of Banking and Insurance
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-31

DEAR COMMISSIONER HOWELL:

You have requested our opinion as to whether the Commissioner of Banking and Insurance may grant a certificate of authority to a partnership to act as an agent for the sale of life, accident and health insurance pursuant to N.J.S.A. 17:22-6.24.

N.J.S.A. 17:22-6.24 presently provides, *inter alia*:

*"No agent of any insurance company authorized to transact in this State the business of life insurance, or life, accident and health insurance shall make or procure to be made, or act or aid in any manner in the negotiation of any such insurance for such a company in this State until he procures from the commissioner a certificate of authority so to do, which shall state in substance that the company is authorized to do business under the laws of this State, and that the person named therein is the constituted agent of the company for the transaction of the business. * * *"* (Emphasis added)

You inform us that the established practice of the Department since 1944 has been to license individuals only and not corporations or partnerships under this section of the law. This practice was based upon the following informal advice of the office of the Attorney General which stated in part that:

" * * You are advised that Section 24 is clear that licenses to agents of life, accident and health insurance may be issued only to individuals. The central scheme of Chapter 175, Laws of 1944, is to issue licenses only to individuals who are required to possess certain qualifications. There is as I have heretofore advised one exception to that scheme and which may be found in Section 14 of the act. By the provisions of Section 24 of the applicable statute, licenses to agents negotiating life, accident and health insurance may be issued only to individuals."*

Section 14 referred to in the above quotation which is applicable only to agents, brokers and solicitors not writing life insurance (see Section 23; N.J.S.A. 17:22-6.23) provided as follows:

"* * * If an agency is operating its business affairs as a copartnership or corporation, such certificate of authority may be issued by such company in the name of such copartnership or corporation, which *certificate shall permit such copartnership or corporation to be licensed as an insurance agent* under this act; provided, all individuals actively engaged in the insurance business of such agency hold an unexpired agent's license issued in accordance with the provisions of this act. * * *" (Emphasis added)

Since sections 1, 2 and 3 of Chapter 175 (N.J.S.A. 17:22-6.1 to 6.3) had defined agents, brokers and solicitors as individuals, the express provision to the contrary in section 14 was questioned. You were then advised that section 14 permitted the licensing of corporations or partnerships as agents for the writing of non-life insurance:

"* * * Sections 1, 2, 3, 6, 9¹ and others clearly indicate application only to individuals and generally inconsistent with that portion of Section 14 which makes it permissible, under certain circumstances, to issue an agent's license to a corporation or a partnership.

"Despite such a lack of harmony, and because there is a presumption in law that the Legislature has not enacted either futile or senseless legislation, the Commissioner may issue a license to a corporation or partnership upon full compliance with *all* of the following conditions:

1. An authorized insurance company has issued a certificate of authority to act as its agent.
2. All individuals actively engaged in the insurance business of such agency (corporate or partnership) hold an unexpired agent's license issued in accordance with the provisions of Chapter 175, Laws of 1944.
3. Payment of a fee of \$10.00.

"The mere issuance of a certificate of authority by an insurance company to a corporate or partnership agency does not entitle such agency to a license from the Commissioner. Section 14 is not self-executing. It requires an affirmative act by the corporation or partnerships named in the insurance company's certificate of authority and compliance by it with the foregoing conditions."

¹ Sections 1, 2 and 3 are the definition sections referred to *supra*. Section 6 prescribes the manner of applying for a license. The applicant is required to supply a certificate from a representative of an insurance company authorized to do business in New Jersey stating: "* * * (b) that the applicant is personally known to him; (c) that the applicant has had experience or instruction in the general insurance business * * * (d) that the applicant is of good reputation and is worthy of a license * * *." Section 9 gives the commissioner power to make a "personal examination" of the applicant "in order to determine his trustworthiness and competency * * *." The commissioner is to grant the license where he finds that the applicant is of good reputation, has had experience or training, or is otherwise qualified by education, that he is reasonably familiar with the insurance laws of this State and with the terms of the policies he is proposing to solicit and finds that he is worthy of a license.

Section 9, which the above opinion had grouped with several other sections applicable only to individuals, was amended by Chapter 82 of the Laws of 1945 to provide expressly that:

"A license may be issued by the Commissioner to and in the name of any copartnership or corporation engaged in the insurance brokerage business upon written request and payment of the twenty-five dollars (\$25.00) fee prescribed in section thirteen of this chapter; provided, all members of the copartnership or all the officers of the corporation, as the case may be, actively engaged in the insurance brokerage business of the copartnership or corporation in this State hold an unexpired license as an insurance broker issued in accordance with the provisions of this act."

This made Sections 9 and 14, both dealing only with agents, brokers and solicitors of non-life insurance companies (see section 23; N.J.S.A. 17:22-6.23) consistent with each other but still anomalous to the rest of the act. No change was made in Section 24 dealing with agents, brokers and solicitors of life insurance companies.

Sections 23 and 24 of Chapter 175, Laws of 1944, were amended by Chapter 291 of the Laws of 1946; the amendments were of a clarifying nature and the significance of the section remained substantially unchanged. Section 24 was amended again in 1948 by Chapter 146 of the laws of that year. This amendment provided for personal examination of first-time appointees and set forth the conditions relating to such examination. It is clear from the 1948 amendment that the licensing of corporations was not contemplated. It is also reasonable to assume that the Legislature, in enacting the amendments of 1946 and 1948, was aware of the administrative interpretation placed upon Section 24 limiting licensing thereunder to individuals.

Since 1944, the Department has limited Section 24 to licensing of individuals. This interpretation is of long standing and is well settled. In our opinion, it should not be disturbed. See *In re West New York*, 25 N.J. 377, 385 (1957); *Kravis v. Hock*, 137 N.J.L. 252, 255 (Sup. Ct. 1948).

Very truly yours,

DAVID D. FURMAN
Attorney General

By: LAWRENCE E. STERN
Deputy Attorney General

OCTOBER 30, 1958

HONORABLE RAYMOND F. MALE, *President*
Civil Service Commission
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-32

DEAR PRESIDENT MALE:

You have requested our opinion as to whether Walter Popielaski, who has requested a hearing on his removal from the employment list for Guard, Middlesex County, is properly entitled to such a hearing.