

FORMAL OPINION

December 31, 1964

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

FORMAL OPINION 1964—NO. 13

Dear Commissioner Howell:

You have requested our opinion whether a domestic life insurance company may grant options to purchase its capital stock to its officers, directors or trustees under the provisions of Title 17 of the Revised Statutes of New Jersey. The proposed stock option plans provide generally for the granting of options to purchase capital stock of the life insurance company by officers, agents or employees, at a price to be established by the board of directors as of the date the option is granted, together with certain restrictions upon the time during which such options may be exercised.

For the reasons stated herein, it is our opinion that a domestic life insurance company may grant stock options to officers, directors and trustees provided the issuance of such options is authorized by the board of directors and is incorporated as a part of the annual agreement for compensation for services between such individuals and the company.

Life insurance companies can be organized and become empowered to commence business and operate in the State of New Jersey under Title 17 of the Revised Statutes of New Jersey. R.S. 17:7-1 *et seq.* The powers which such companies may exercise are set forth at length in this regulatory statute. R.S. 17:18-1 *et seq.* It has long been the established policy of this State that insurance companies "have all the powers granted and be subject to all the duties and obligations imposed by Title 14, Corporations, General except so far as they may be inconsistent with the provision of this subtitle." R.S. 17:18-1. *Aetna Casualty & Surety Co. v. International Re-Insurance Corporation*, 117 N.J. Eq. 190 (Ch. 1934); *Camden Mortg. Guaranty & Title Co. v. Haines*, 110 N.J. Eq. 461 (E. & A. 1932); *Amabile v. Lerner*, 64 N.J. Super. 507, 511 (Ch. Div. 1960), *aff'd* 74 N.J. Super. 443 (App. Div. 1962).

Under Title 14, general stock corporations have long been empowered to grant stock options subject only to authorization therefor in the certificate of incorporation or by the board of directors. The pertinent statute provides in part:

"Every corporation organized under this Title may create optional rights to purchase or subscribe, or both, to stock of any class or classes or of any series thereof on such terms, at such price, in such manner and at such time or times as, unless otherwise provided elsewhere in this Title, shall be expressed in the certificate of incorporation, or in a resolution adopted by the board of directors pursuant to authority conferred upon it by the certificate of incorporation, and may issue such warrants or other evidence of such rights." R.S. 14:8-4.

Further, general corporations under Title 14 may grant stock options in conjunction with plans to enable employees and others to participate in the acquisition of capital stock. Thus a domestic stock corporation may undertake:

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“... the issue or the purchase and sale of its capital stock to any or all of its employees and those actively engaged in the conduct of its business . . . , and for aiding any such employees and other persons in paying for such stock by contributions, compensation for services, or otherwise.” R.S. 14:9-1.

With respect to insurance companies, several statutes deal generally with remuneration to directors, officers and employees for services rendered. R.S. 17:21-2 provides:

“The directors of any insurance company of this state, when acting as its officers, and also for each occasion of their attendance at meetings of the board or its committees, may receive such compensation as a majority of the board deems just and reasonable.”

R.S. 17:34-4 further provides as follows:

“No domestic life insurance company shall:

- a. Pay any salary, compensation or emolument to any of its officers, directors or trustees, or any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, unless the payment is first authorized by a vote of its board of directors;
- b. Make any agreement with any of its officers, trustees or salaried employees whereby it agrees that for any service rendered or to be rendered he shall receive any salary, compensation or emolument that will extend beyond a period of twelve months from the date of the agreement, but nothing herein shall be construed to prevent a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No officer, director or trustee who receives for his services in that capacity a salary of more than one hundred dollars per month shall receive any other compensation or emolument for his services; or
- c. Grant any pension to any officer, director or trustee thereof or to any member of his family after his death, except that it may grant to its salaried officers and employees retirement and disability allowances and death benefits, according to a plan submitted to and approved by the commissioner.”

The question as to whether an insurance company may grant stock options to officers, directors or trustees arises because of the apparent limitation or restriction contained in the last sentence of subsection b of R.S. 17:34-4 and whether the grant of such stock options pursuant to Title 14 may be inconsistent with the provisions of R.S. 17:34-4. We are satisfied that the issuance of such stock options would not conflict with this latter statutory provision and may be undertaken by domestic life insurance companies provided that they are properly authorized.

The touchstone for the proper interpretation of any legislation is the essential policy of the particular statute, the objectives to be accomplished and the underlying intent of the Legislature. *Cammarata v. Essex County Park Commn.*, 46 N.J. Super. 262, 270 (App. Div. 1957) *aff'd* 26 N.J. 404 (1958); *Loboda v. Clark Tp.*, 40 N.J. 424

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(1963); *Safeway Trails, Inc. v. Furman*, 41 N.J. 467 (1964). The objectives of the Legislature in enacting R.S. 17:34-4 are disclosed by a review of its history. This statute was enacted as part of the Laws of 1907, c. 72, sec. 8, on April 15, 1907. At that time, both North Dakota (S.L. 1907, c. 154, sec. 1, March 19, 1907) and Illinois, (Senate Bill No. 158, sec. 1, May 20, 1907) had enacted statutes in language practically verbatim to that of New Jersey's law. Shortly thereafter, New York enacted a similar statute. N.Y. Consol. Laws, Insurance, Sec. 214; L. 1909, c. 33, sec. 98.

The language of these statutes originated in certain bills proposed in a report of the so-called Committee of Fifteen, submitted at a conference on Uniform Insurance Legislation, December 1, 1906. The Committee had been appointed at a conference of governors, attorneys-general and insurance commissioners at Chicago, proposed uniform acts regulating the business of insurance and was made a part of the Report of Superintendent of Insurance of the District of Columbia, etc., Message from the President of the United States, January 24, 1907, 59th Congress, 2nd Session, House of Representatives, Document No. 559.

The report proposed "A bill relating to the salaries of officers and agents of life insurance companies". The following language is found in Sec. 1 of this proposed bill: ". . . and no officer, director, or trustee, who is paid a salary for his services of more than \$100.00 permonth shall receive any other compensation or emolument." *Ibid.* p. 45.

The New Jersey Senate Select Committee on Life Insurance, which conducted hearings between June, 1906 and March, 1907 placed considerable reliance upon the above report. "One of the most valuable contributions to this subject is the report of the so-called Committee of Fifteen . . .", and "We have reported a bill for the amendment of the General Insurance Law, embodying those proposals of the Committee of Fifteen, which we have adopted, and certain other changes". Report of Senate Committee on Life Insurance Investigation, Vol. IV, 1907, p. 14 and 15.

Excerpts from the New Jersey Committee's report graphically reveal the Committee's attitude and tend to establish the intention behind L. 1907, c. 72, sec. 8, R.S. 17:34-4. In referring to one of the large domestic life insurance companies, it noted the existence of substantial surpluses, characterized as a "vast accumulation of money". It is to be remembered, too, that the principal stockholders are the officers, who have complete control of the funds of the company, and that they have paid themselves therefrom salaries which are doubtless by far the highest salaries ever known in this State." *Ibid.* p. 20.

Later, The Committee stated that "We have considered the question of the expenses of life insurance companies and the salaries paid to the chief officers." *Ibid.* pp. 23 to 24. Of the three companies, salaries in one were "moderate", in the second, "liberal", and in the third, "very large". "Our impression is that the extravagance is chiefly among the officers and employees occupying the chief places and receiving the largest salaries." *Ibid.* p.24.

The Committee had earlier set out their philosophy:

"While an insurance company cannot be said to be a public corporation in the strict sense that a railroad company is, yet a sound public policy would seem to dictate that it should be held to a somewhat similar strict responsibility in administering its trust funds for the benefits of its constituents, in giving equal privileges and terms to them all, and in saving and apportioning the trust funds for their benefit." *Ibid.* p. 21.

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It is evident that this committee and the Legislature as a whole were concerned over the disposition of insurance company surpluses. They were fearful that undisclosed large salaries and cash bonuses might siphon off funds more properly belonging to the stockholders or policyholders. This history indicates that the Legislature contemplated the correction of this abuse alone by the enactment of Section 8 of the 1907 law.

As noted, R.S. 17:34-4(b), in part prohibits any officer, director, or trustee, receiving a "salary" of more than \$100 per month from receiving "any other compensation or emolument for his services". Initially, it must be determined whether such a plan constitutes "other compensation or emolument" within the meaning and intent of this prohibition. This depends upon the meaning which the Legislature intended to accord the term "salary" and whether "salary" in this context must be limited to periodic cash payments or was intended in a broader or more general sense. If construed narrowly, then stock options would be considered "other compensation or emolument" and would be in conflict with this section.

The words "salary", "compensation", and "emolument" each appear four times in three distinct contexts: requiring approval by the board of directors of any compensation to officers, directors or trustees, and compensation of others in excess of \$5,000; limiting employee contracts of officers, trustees, and salaried employees to a period of one year; and restricting the amount of compensation payable to an officer, director, or trustee. In all but the final instance, where the word "salary" is separated from the others, these words are combined in the phrase "salary, compensation or emolument".

It is apparent that these three words were meant to be used interchangeably, for the Legislature clearly recognized that corporate officers and directors might receive not only salaries in the narrowest sense (periodic cash payments) but also other things of value as compensation or emolument. Any construction limiting the word "salary" to its narrowest meaning could only lead to one of two untenable results: either that no officer, director, or trustee may receive any recompense other than a salary; or that only salaried officers, directors, or trustees are prohibited from receiving other compensation or emolument while those who receive some other form of recompense than salary would not be so restricted.

It is our opinion that the Legislature intended the word "salary" to be used in this section in its broadest sense, being synonymous with the words "compensation" and "emolument". While there is no uniformity in court decisions through the country as to the meaning of the word "salary", in most cases courts have chosen to equate this word with "compensation" or "emolument" when the particular context calls for such treatment. There is ample authority construing the words "salary", "compensation", or "emolument" to be synonymous and interchangeable. As to "salary" and "emolument", see: *Vansant v. State*, 53 Atl. 711, 714 (Del. Ct. of App., 1902); *Town of Bruce v. Dickey*, 6 N.E. 435, 439 (Ill. Sup. Ct., 1886); *State ex rel. Benson v. Schmahl*, 145 N.W. 794, 795 (Minn. Sup. Ct., 1914); *Dugger v. Bd. of Supervisors of Panola Cty.*, 104 S. 459, 461 (Miss. Sup. Ct., 1925); *State v. Dishman*, 68 S.W. 2d 797, 798 (Mo. Sup. Ct. 1934); *State ex rel. Lyons v. Guy*, 107 N.W. 2d 211, 215, 216 (N.D. Sup. Ct., 1961); *Sellers v. School District of Twp. of Upper Moreland*, 122 A. 2d, 800, 801 (Pa. Sup. Ct., 1956); *Taxpayers' League of Carbon Cty. v. McPherson*, 54 P. 2d 897, 901 (Wyo. Sup. Ct., 1936); as to "salary" and "compensation", see: *Treu v. Kirkwood*, 255 P. 2d 409, 413 (Cal. Sup. Ct., 1953); *Cook Cty. v. Healy*, 78 N.E. 623 (Ill. Sup. Ct., 1906); *State ex rel. DeGhant v. Kessler*, 14 N.E. 2d 350 (Ohio Sup. Ct., 1938); *Scroggie v. Scarborough*, 160 S.E. 596, 599 (S.C. Sup. Ct., 1931); *Christopherson v. Reeves*, 184 N.W. 1015, 1019 (S.D.

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employment agreement which by its terms may not extend beyond one year. Thus, any proposed stock options for officers, directors or trustees must be issued or granted during the term of the annual employment agreement even though they may be exercised at a later date.

In conclusion, for the foregoing reasons, you are advised that domestic life insurance companies may grant stock options to officers, directors, and trustees under the general provisions of Title 14 provided such options comply with applicable limitations set forth in R.S. 17:34-4 as indicated herein.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: AVROM J. GOLD
Deputy Attorney General

January 23, 1964

MR. CHARLES F. SULLIVAN, *Director*
Division of Purchase and Property
Department of the Treasury
State House
Trenton, New Jersey

MEMORANDUM OPINION—NO. 1

Dear Mr. Sullivan:

You have requested our opinion as to the nature and scope of your authority to make agreements for the leasing of space in state buildings to private corporations for the installation of vending machines which dispense various commodities. For the reasons set forth below, it is our opinion that complete control of vending machine contracts, areas of installation, types of machines installed, and the revenue to be derived therefrom is vested in the Department of the Treasury to be exercised through the Division of Purchase and Property and its director. This applies to all buildings owned by the State, except where a statute may otherwise specifically provide.

In 1931 the Legislature gave certain powers to the State House Commission regarding control of State buildings and the leasing of office space. By P.L. 1931, c. 184 (now N.J.S.A. 52:20-7) it was provided:

“The commission shall have custody of the state house, the property contained therein and the adjacent public grounds and all buildings owned by the state, including the state barracks, which are used by the departments, agencies and officials of the state in connection with the conduct of the state’s business, and shall lease from time to time such office space as may be required for the conduct of the state’s business at such terms and under such conditions as it may deem appropriate.”