



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
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September 7, 2018

Via E-Mail

Brendi E. Kaplan

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Attorney

Nelson Mullins Riley & Scarborough LLP

Re: Request for Interpretive Opinion No. 03-18  
Applicability of Tenn. Code Ann. § 56-35-131(a)(1)

Dear Ms. Kaplan:

The Insurance Division (“Division”) of the Tennessee Department of Commerce and Insurance (“Department”) is in receipt of your request for an interpretive opinion regarding Tenn. Code Ann. § 56-35-131(a)(1).

Nelson Mullins Riley & Scarborough LLP (“Nelson Mullins”) represents a title agency business that is currently licensed to operate its title insurance business in other states that plans to seek a license in Tennessee (“Licensee”). The request for Interpretive Opinion concerns the interpretation of Tenn. Code Ann. § 56-35-131(a)(1), which provides that revenue derived from controlled businesses in Tennessee may not exceed 40% of the gross operating revenue of the (title agency) company.

Question: Does the 40% controlled business gross operating revenue limitation operate as a fraction where only the Tennessee business would be the numerator and the aggregate of all gross operating revenue from the “business of the company” would be the denominator? Stated another way, would a title company be in compliance with the limitation in Tenn. Code Ann. § 56-35-131(a)(1) where a title insurance agency’s gross operating revenues attributable to sources of controlled business in Tennessee constitute LESS than 40% of the company’s total gross operating revenues wherever derived?

Tenn. Code Ann. § 56-35-131(a)(1) requires the following restriction on a title company's certificate of authority, "the gross operating revenues for any fiscal year attributable to the placement or issuance of policies or contracts of title insurance derived from all sources of controlled business shall not exceed forty percent (40%) of the gross operating revenues of the company, agent or agency."

The Tennessee Supreme Court has stated, "When dealing with statutory interpretation, well-defined precepts apply. Our chief concern is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. When a statute is clear, we apply the plain meaning without complicating the task. Our obligation is simply to enforce the written language. When a statute is ambiguous, however, we may reference the broader statutory scheme, the history of the legislation, or other sources. We presume the General Assembly was aware of its prior enactments at the time it passed the legislation." Colonial Pipeline Co. v. Morgan, 263 S.W.3d 827, 836 (Tenn. 2008) (*internal citations omitted*).

The term "controlled business" is defined in Tenn. Code Ann. § 56-35-102(3) as "that portion of a title insurance company's, title insurance agent's or title insurance agency's business in this state with which there is connected in any way, directly or indirectly..."

The legislature limited the term "controlled business" in Tenn. Code Ann. § 56-35-102(3) to the portion of the business "in this state." However, in Tenn. Code Ann. § 56-35-131(a)(1), there is no parallel reference to, or limitation of, "gross operating revenues of the company" being derived from business "in this state."

It is the interpretation of the Division that the 40% controlled business gross operating revenue limitation is determined by placing only the Tennessee business as the numerator and the aggregate of all gross operating revenue from the "business of the company" as the denominator. Stated another way, a title company would be in compliance with the 40% limitation in Tenn. Code Ann. § 56-35-131(a)(1) where a title insurance agency's gross operating revenues attributable to sources of controlled business in Tennessee constitute LESS than 40% of the company's total gross operating revenues wherever derived.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different

facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Patrick W. Merkel". The signature is written in a cursive style and is positioned above a horizontal line.

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