

The State of South Carolina

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Office of the Attorney General

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March 20, 1990

The Honorable James E. Bryan, Jr.
Senator, District No. 9
501 Gressette Building
Columbia, South Carolina 29202

Dear Senator Bryan:

You have requested the advice of this Office concerning the following. Several local political subdivisions (cities and school districts) have entered an agreement pursuant to South Carolina Code Section 15-78-140(b) (1989 Cum. Supp.) to establish a self-insurance pool to cover those liability risks created by the General Assembly when it enacted the Tort Claims Act.¹ The governmental participants in this self-insurance pool have decided to procure excess insurance through a non-licensed eligible surplus line commercial carrier and apparently this coverage is being procured through a licensed insurance broker. See, South Carolina Code Sections 38-45-90 and -110 (1976 as revised). Parenthetically, the Tort Claims Act provides that "[a] pooled self-insurance liability pool is authorized to purchase ... excess insurance." Section 15-78-140(b). The broker who procured the excess liability coverage for the pool apparently transferred to the purchasers the costs of the broker's premium tax of four percent. You question whether a broker's premium tax must be paid upon this transaction.

South Carolina Code Section 38-45-20 (1989 Cum. Supp.) provides in pertinent part:

A resident may be licensed as an insurance broker by the commissioner if the following requirements are met:

(4) the payment to the Commissioner, within thirty days

1. Section 15-78-10, et seq. (1989 Cum. Supp.).

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after March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year, of a broker's premium tax of four percent upon the premiums approved for policies of insurers not licensed in this State.

There, of course, is no exemption provided in this statutory provision, or elsewhere in Title 38, Chapter 45 of the South Carolina Code, that would relieve the broker of his responsibility for payment of this four percent broker's premium tax even if the purchaser of the insurance coverage were a tax-exempt public entity. Here, the purchaser is the self-insurance pool that is comprised of governmental subdivisions that are generally exempt from property taxes.^{2/} Nonetheless, this broker's premium tax is not an ad valorem tax imposed upon the property of a local subdivision, but instead is an obligation placed upon the licensed broker and is but one of several requirements placed directly upon an individual as a condition of maintaining a broker's license. Thus, the broker's premium tax is the responsibility of the broker, not the members of the self-insurance pool.^{3/} Accordingly, it appears that the tax exempt status of the governmental subdivisions that comprise the self-insurance pool does not remove the broker's obligation to pay the broker's premium tax.

Further, I do not believe that Section 15-78-140(b) removes this requirement. It is clear that the establishment of pooled self-insurance liability funds by local governmental subdivisions is not to be construed as transacting the business of insurance and, thus, is not generally subject to the state laws regulating insurance. Nonetheless, this exemption of regulation does not extend to commercial insurance carriers nor to licensed insurance brokers who procure excess insurance for these pools. The licensed

2. Pursuant to South Carolina Code Section 12-37-220(A)(1) (1989 Cum. Supp.) and Article X, Section 3 of the State Constitution, all property of municipalities and school districts is exempt from ad valorem taxes provided the property is used exclusively for public purposes.

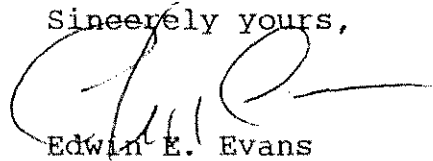
3. In this regard, the broker's premium tax more closely resembles a sales tax than a property tax. Ordinarily, the fact that a purchase is made by a governmental subdivision does not ipso facto remove the seller's obligation to remit sales taxes as prescribed in Title 12, Chapter 35, Article V of the South Carolina Code, although specific transactions, such as the sale of text books used in schools, are exempted from sales taxes. See Section 12-35-550 (2).

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insurance broker remains subject to all laws regulating insurance which include, as a condition of the broker's license to do business in South Carolina, the payment of a broker's premium tax of four percent upon the premiums for policies of insurers not licensed in this state.

As you have suggested in your request letter, there may be sound policy reasons to exempt brokers from the payment of the broker's premium tax when the purchaser of the insurance is a self-insurance pool comprised of governmental entities. This is a matter that could be addressed by subsequent legislation if the General Assembly so chooses.

Sincerely yours,



Edwin E. Evans
Chief Deputy Attorney General

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