

1973 WL 26803 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 5, 1973

*1 The Honorable Lanville H. Mengedoht
Acting Chief Insurance Commissioner
S. C. Department of Insurance
2711 Middleburg Drive
Columbia, South Carolina 29204

Dear Mr. Mengedoht:

I have, at your request, further considered the provisions of Act No. 1352, approved the 2nd day of June, 1972, and relating to annual insurance company statements so as to provide for additional authenticating signatures by qualified actuaries.

By an opinion dated February 13, 1973, I advised that, in my opinion, the amendment referred to above, which amends Section 37-293, Code of Laws, 1962, precludes a qualified certificate by an actuary, reciting that it is 'based on the inventory of policies in force as supplied to me by the (blank) company.'

You have now submitted two additional questions:

1. Can a consulting actuary who is not an officer of the company but who otherwise qualifies sign the statement in lieu of signing an affidavit of the type set forth in 37-295 (37-293)?
2. If yes, can the jurat be amended to reflect the relationships of the actuary to the company?

In my opinion, the answer to both questions is in the affirmative.

Section 37-293, as amended, provides that if an insurance company is licensed to transact certain designated types of insurance (life, accident or health), its annual statement must 'also be signed by an actuary or consulting actuary.' The amended statute further provides that:

'—a consulting actuary who is not an officer or director of such company may, in lieu of signing such statement, certify by affidavit that the annual statement contains a full and true statement—.'

The Act clearly requires that such annual statement be signed by an actuary or consulting actuary. These terms are not defined by the statute, but their meaning appears clear. In the case of a consulting actuary who is not an officer or director of the company, he may, in lieu of signing the annual statement, submit the affidavit referred to in the amended statute. This appears to be the clear import of Section 37-293.

In your second question, I assume that you refer to the jurat appended at the foot of the first page of the annual statement which has continued in its present form for a number of years and contains similar wording at the time of the amendment of Section 37-293. The statute requires that a consulting actuary may sign the annual statement or submit a separate certificate in lieu of such signing. It is my opinion that the form utilized may be amended to reflect the relationship of the actuary to the company. In practical application, this amounts to nothing more than adding the wording 'consulting' or 'consulting actuary' to the form now being utilized.

I express no opinion as to whether the jurat was be amended in other respects. It appears, however, that the annual statement, for a number of years, has, and continues to contain matters which are not of an actuarial nature and that it recites that the oath is based upon information, knowledge and belief. In signing such an oath, a consulting actuary attests to the correctness of the entire statement, both as to its actuarial and non-actuarial items, based upon information, knowledge and belief, as set forth in the form prescribed by the Insurance Department. Under the amended Section 37-293, he may, in lieu of signing such an all-inclusive oath, submit a certificate reciting that the statement contains a full and true statement with respect to policy reserves and all other items of an actuarial nature. The statute does not permit such a certificate to be based upon information and belief but does restrict it to matters of an actuarial nature only.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

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