

1973 S.C. Op. Atty. Gen. 327 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3644, 1973 WL 21095

Office of the Attorney General

State of South Carolina

Opinion No. 3644

October 17, 1973

***1** Records required by Section 37–105 and Section 10–425 of the Code which relate to the Chief Insurance Commissioner being designated as agent for the service of process are public records and are to be retained and disposed of in accordance with a schedule adopted pursuant to the provisions of Act No. 291 of 1973.

To: Deputy Insurance Commissioner

Section 37–105 of the South Carolina Code of Laws, as amended, establishes and Chief Insurance Commissioner as agent for service of process for every insurance company that does business in this State. See also CODE OF LAWS OF SOUTH CAROLINA § 10–425, as amended (1962). During the last session of the General Assembly, a statute was enacted that generally provides for the retention and disposal of public records of this State and its political subdivisions. See, 58 STAT. Act No. 291 at 350 (1973). You have inquired about the applicability of that statute to records which the Department of Insurance is required to maintain because of the Commissioner's designation as agent for service of process. Specifically, you seek our advice concerning how long such records are to be retained and how they are to be disposed of.

Section 1 of Act No. 291 defines the term 'public records' in part as follows:

'[P]ublic records' means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency . . .

And as to retention and disposal of public records, the statute prescribes:

. . . Then requested by the [South Carolina Department of Archives and History], agencies . . . shall assist the Archives to prepare an inclusive inventory of records in their custody and a schedule establishing a time period for the retention of each series of records. This schedule shall be approved by the governing body of the subdivision or the head of the agency having custody of the records, the Director of the Archives, and in case of records of state . . . agencies, the State Budget and Control Board. This schedule shall serve as authorization for the destruction of records retained for the stated time period . . . 58 STAT. Act No. 291 § 9 at 352–353 (1973).

In our judgment, the instrument appointing the Chief Insurance Commissioner as agent for the service of process which is required of every insurance company that desires to do business in this State, by Section 37–105, and one of the two copies of the summons and other legal process served upon the Commissioner in a proceeding against an insurance company, which is required by Section 10–425 to be served upon the Commissioner, constitute 'public records' and are, therefore, subject to the provisions of the 1973 Act. Such records, it seems to us, are 'records which by law are required to be kept and maintained' by the Department of Insurance, a public agency. As public records, the period of their retention and their disposal are to be regulated by a schedule that is to be approved by the Chief Insurance Commissioner, since he is the head of the Department of Insurance, by the Director of Archives, and, because they are records of a State agency, by the Budget and Control Board.

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Deputy Attorney General

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