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Robert Ansehl
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New York, NY 10119-4115

Re: **Interpretive Opinion No. 06-14, Tennessee Insurable Interest Laws and Charitable Associations**

Dear Mr. Ansehl,

This letter is written in response to your inquiry submitted on or about May 22, 2014, to Michael Humphreys, the Assistant Commissioner for Insurance of the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division"). Your inquiry requested clarification as to whether a trust established by a charitable association ("HA") consisting of various U.S. Internal Revenue Code §501(c) qualified members (each, a "Member") has an insurable interest in the lives of future or current recipients of employee benefit and pension fund benefits provided by each Member, provided such individuals consent to, apply for, and acquire the life insurance policies ("Policies") on their lives.

The facts as understood by the Division are as follows: The HA, a long established and recognized charitable association, consists of various Members. The HA and each Member, respectively, have qualified as a charitable organization under §501(c) of the U.S. Internal Revenue Code. Each Member is faced with under-funded or unfunded retirement and other established benefits programs that are payable to its employees, their respective families, and other participants ("Participants") in the employee benefit and pension fund programs of such Member. In order to address this issue, the HA and the Members are considering a life insurance program ("Program") to fund the future employee benefits.

Under the Program, the HA, in coordination with each Member, will ask certain Participants who are future or current recipients of pension fund benefits for consent to apply for and acquire Policies on their lives. It is expected that all Participants will be residents of Tennessee.

A trust ("Trust") will be established to hold the Policies with the HA and/or the Members and act as the sole irrevocable beneficiary. The HA (or the applicable Member) will allocate the death benefits from each Policy resulting from the death of a Participant to the Member where such

Participant was affiliated. A professional institutional trustee, such as a reliable bank or securities firm acceptable to the parties, will be appointed as the trustee of the Trust. With the consent of the Participants, the Trust will apply for the Policies and will become the sole owner and beneficiary of the Policies issued in connection with the Program. The Trust will thereby provide the HA or the applicable Members (and, ultimately, Participants) with the net benefits under the Policies. In turn, the Trust will obtain a premium financing loan ("Loan") to pay for the premiums on the Policies. All premiums on the Policies will be paid by the Trust, as sole owner of the Policies, and the life insurers issuing Policies will receive full disclosure and be fully informed as to all relevant terms of the Program.

The Loan will be a conventional loan. The Loan will mature after 30 years from the date of issuance and will be used solely to pay premiums for the Policies and loan-related costs. The Loan will be unsecured and the Trust will retain all incidents of ownership of the Policies. There will be no recourse to the HA, the Members or the Participants. The lender(s) will not be entitled to foreclose or settle the Policies under any circumstances, even for non-payment of principal or interest under the Loan. The lenders may cause the trustee of the Trust to surrender the Policy to the applicable issuing insurer. Otherwise, the lender's sole interest in the Policies will be a collateral security interest in the Policies' proceeds solely to secure repayment of the Loan. Except for the limited surrender right, neither the Policies nor any benefits thereof can be sold or transferred by the Trust and the Loan can never exceed the value of the death benefit or the surrender value, as applicable. At all times during the 30-year term of the financing, the sole means of repayment of the Loan will be payment under the Policies upon Policy surrender or maturity and even the HA and the Members cannot otherwise instruct the sale or transfer of the Policies by the Trust.

Each Policy will cover a particular Participant and the proceeds of each such Policy will be allocated to repay a portion of the Loan and then paid only to the employee benefit funding of the Participant's Member-employer and not to any other Members.

Tenn. Code Ann. § 56-7-314 (2008) provides:

> If an organization described in either § 170(c) or § 501(c)(3) of the Internal Revenue Code of 1986, codified in 26 U.S.C. §§ 170(c) and 501(c)(3), respectively, purchases or receives by assignment, before or after April 23, 1992, life insurance on an insured who consents in writing to the purchase or assignment, the organization is deemed to have or to have had an insurable interest in the insured person's life on the date of purchase or assignment. This section does not limit or abridge any insurable interest on April 23, 1992, at common law or by statute.

A charity, such as a Member, has an insurable interest in the life of a Participant, an insured person who consents. The current version of the statute, as amended, removing the changes adopted in 2004, was not intended to apply to and does not contemplate the above transaction or the Trust's insurable interest. We are of the opinion that the amendment of the above statute was intended to address certain charitable annuity issues and does not affect the charitable use of a trust under a situation as described above. Therefore, the Division's position is that the use of the Trust in connection with the transaction to implement the Program is not prohibited under Tenn.

Code Ann. § 56-7-314 (2008) and that, for life insurance purposes, each Member maintains an insurable interest in the respective Participants.

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 letter expresses the Division's position on enforcement action only and does not purport to express legal conclusions on the issues presented. 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 relating to the insurable interests a charitable association may have in the lives of future or current recipients of employee benefits as regulated by Tenn. Code Ann. § 56-7-314 (2008) 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 by Mr. Robert Ansehl 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.

Chlora Lindley-Myers,
Deputy Commissioner
and Acting General Counsel

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