

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
P. O. BOX 20207  
NASHVILLE, TENNESSEE 37202

November 23, 2004

Opinion No. 04-168

Solicitation of Charitable Funds Act / LILAC Registration

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**QUESTION**

Are trusts and life insurance agents involved in a LILAC<sup>1</sup> transaction, a trust arrangement formed to pay the proceeds of life annuity contracts and life insurance policies to investors and charities, required to register under the Solicitation of Charitable Funds Act (Act), TENN. CODE ANN. §§ 48-101-501 *et seq.* (Supp. 2002)?

**OPINION**

No. Because the transaction does not involve the transfer or solicitation of a “contribution” as defined by TENN. CODE ANN. § 48-101-501(2), it is the opinion of this office that neither the trusts nor the parties who solicit the consenting individual’s participation in the transaction are required to register pursuant to TENN. CODE ANN. § 48-101-504(a) and § 48-101-507(a)(1).

**ANALYSIS**

In a LILAC transaction, an entity or person forms a statutory business trust as a vehicle for paying the proceeds of life annuity contracts and life insurance policies to investors and charities. After it is formed, the trust obtains life insurance and life annuities on the lives of consenting individuals, pays the premiums,<sup>2</sup> sells equity securities to investors<sup>3</sup>, and issues a second class of securities to charitable organizations designated by the consenting individuals. It is contemplated that licensed insurance agents or charitable organizations will solicit individuals to consent to this program. Along the way, the payor entities pay the life annuity proceeds and the life insurance death benefits for a predetermined pool of consenting individuals to the trust. Because the arrangement contemplates that there will be annuity payments during the life of the consenting individual, the

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<sup>1</sup> “LILAC” is an acronym for Life Insurance Life Annuities Combination.

<sup>2</sup> The consenting individuals do not pay premiums.

<sup>3</sup> Under this agreement, only qualified institutional investors may purchase the equity securities.

trust uses life annuity payments to pay investors interim, partial returns on their investments and to pay life insurance premiums.

As consenting individuals die, the trust distributes the life insurance death benefit proceeds, per each consenting individual, on a pro rata basis to investors and to pay the trust's expenses. The trust pays the remainder of the life insurance death benefits (approximately five per cent) for each consenting individual to charities specifically designated by each consenting individual. When the last consenting individual dies, the trust pays investors and any unpaid expenses of the trust. Finally, the trust distributes any remaining funds on a pro rata basis to the designated charities and the trust is dissolved.

Under this arrangement, consenting individuals make no direct contributions to charities and incur no risk to participate. Consenting individuals simply allow the trust to have their permission to use the insurable interest they have in their lives. The question, therefore, is whether the trust or insurance agents are soliciting or obtaining contributions when they ask individuals to consent to the use of the insurable interests that they have in their lives. In other words, the question is whether this limited act of consenting to allow the trust to use the insurable interest on their lives constitutes a "contribution" under the Act.

The Act defines "contribution" as "the promise or grant of any money or property of any kind or value, including the payment or promise to pay in consideration of a sale, performance or show of any kind which is advertised or offered in conjunction with the name of any charity." TENN. CODE ANN. § 48-101-501(2). There is no Tennessee case law addressing whether "consent" to the acquisition of a life insurance policy on the individual's life is an interest in property. Other case law interpreting insurable interests and property rights, however, provides ample guidance.

Traditionally, Tennessee common law has defined an "insurable interest" in a person's life or property as not having the same characteristics as other interests recognized by law as property interests. Generally, any person who derives benefit from existence of property or who would suffer loss from its destruction has an insurable interest therein, and it is sufficient that loss of the property insured not only would, but might, subject the insured to pecuniary injury. *American Indemnity Co. v. Southern Missionary College*, 195 Tenn. 513, 260 S.W.2d 269 (1953). Property rights have been described as interests or rights such as possession, use, or enjoyment. *State v. Crowell*, 733 S.W.2d 89, 96. (Ct. App. 1987). Most importantly, property rights and interests are subject to disposition. *Id.*

In addition to common law, Tennessee statutes allow for certain charitable organizations to obtain an "insurable interest" in the life of a consenting individual. See TENN. CODE ANN. § 56-7-314 *et seq.* Recently, the Tennessee legislature amended this statute to include the type of trust at issue as follows:

If a charitable organization purchases or receives by assignment, before, on or after April 23, 1992, life insurance on an insured who consents in writing to the purchase or assignment, the charitable 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. For purposes of this section, a "charitable organization" means:

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(3) Any trust, partnership, limited liability company or similar entity approved in writing as the beneficiary and irrevocable owner of the life insurance by an organization described in subdivision (1) or (2). This section does not limit or abridge any insurable interest existing on April 23, 1992, at common law or by statute.

TENN. CODE ANN. § 56-7-314(3) (Supp. 2004). This statutory provision shows that the insurable interest exists only by operation of law and arises only after the consent is given. Therefore, the act of giving consent does not serve to transfer any money or property. Even if the "insurable interest" could be deemed property, it is not "promise[d] or grant[ed]" by the consenting individual to a charity or anyone else. *See* TENN. CODE ANN. § 48-101-501(2). Furthermore, we have found no authority to suggest that an insurable interest can be transferred like other property interests such as land or business goodwill.

For the reasons cited above, the proposed LILAC trust transaction does not fall within the definitions or purpose<sup>4</sup> of the Act. Under the Act, the trusts and the agents are not acting as a group "who solicits or obtains contributions solicited from the public for charitable purposes." TENN. CODE ANN. § 48-101-501(1). Therefore, they are not required to register as charitable organizations under TENN. CODE ANN. § 48-101-504(a) with the Secretary of State's Office because the LILAC transaction does not involve any solicitation of "contributions". Specifically, any "contribution" involved in the transaction does not involve the transfer of any money or property.

For the same reasons, the trusts, insurance agents and any entity acting as an agent for the trust are not required to register under TENN. CODE ANN. § 48-101-507(a)(1) because they do not

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<sup>4</sup> The Act provides a comprehensive statutory plan regulating charitable organizations soliciting funds. TENN. CODE ANN. §§ 48-101-501, *et seq.* One of the purposes of the Act is to ensure that the public is protected from fraudulent schemes related to charitable giving. The Secretary of State's office informs the public of the purpose and use of money given to charities. Here, the LILAC transaction primarily involves consenting individuals, insurance agents, and institutional investors, not the general public. The business entities involved are largely regulated by other laws. Likewise, the designated charities involved are only those properly registered with the Secretary of State's office.

qualify as professional solicitors as defined in TENN. CODE ANN. § 48-101-501(7)<sup>5</sup> who solicit contributions of “money or property of any kind or value.” TENN. CODE ANN. § 48-101-501(1).

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PAUL G. SUMMERS  
Attorney General

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MICHAEL E. MOORE  
Solicitor General

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TAMEKA M. CORLEW  
Assistant Attorney General

Requested by:

Riley C. Darnell  
Secretary of State  
Department of State  
Nashville, TN 37243-0305

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<sup>5</sup> This subsection provides as follows:

[A]ny person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization, whether such solicitation is performed personally or through such person’s agents, servants or employees or through agents, servants or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on or advises a charitable organization in connection with the solicitation of contributions. . . A professional solicitor does not include an attorney, investment counselor, or banker who in the conduct of such person’s profession advises a client.