GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2025-18

The Honorable Glen Mulready
Insurance Commissioner
Oklahoma Insurance Department
400 N.E. 50th St.
Oklahoma City, OK 73105

December 16, 2025

The Honorable Jason Blair
Oklahoma House of Representatives, District 53
2300 N. Lincoln Blvd., Rm. 546
Oklahoma City, OK 73105

Dear Commissioner Mulready and Representative Blair:

This office has received your request for an Attorney General Opinion in which you ask, in effect, the following questions:

1. **Does article X, section 15 of the Oklahoma Constitution prohibit the State of Oklahoma from creating and owning a captive insurance company, as the term is used in the Oklahoma Captive Insurance Company Act, 36 O.S.2021 & Supp.2022, §§ 6470.1–6470.35?**

2. **Does article X, section 17 of the Oklahoma Constitution prohibit the Legislature from enacting laws to permit a political subdivision of the State of Oklahoma to create and own a captive insurance company, as the term is used in the Oklahoma Captive Insurance Company Act, 36 O.S.2021 & Supp.2022, §§ 6470.1–6470.35?**

I.
SUMMARY

The answer to both questions is no. While sections 15 and 17 of Article X of the Oklahoma Constitution prohibit the State and its political subdivisions from owning a "company, association, or corporation," this prohibition is intended to prevent public aid to or investment in private entities. A captive insurance company wholly owned by the State or a political subdivision, and existing only to insure against that body's risk exposure, does not implicate these concerns. However, this Opinion is subject to the caveats set forth in Section III, *infra*.

II.
BACKGROUND

A general definition of "captive insurance company" is as follows:

> A "captive insurance company" is a risk-financing method or form of self-insurance involving the establishment of a subsidiary corporation or association organized to write insurance. Captive insurance companies operate just like ordinary insurers in nearly every respect, however, their distinguishing feature is that they may only cover the risks of their parent companies and related entities.

JORDAN PLITT, ET AL., COUCH ON INSURANCE § 39:2 (3d ed. Dec. 2025 update), Westlaw COUCH. *See also Captive insurance*, BLACK'S LAW DICTIONARY (12th ed. 2024) (defining "captive insurance" as "[i]nsurance that provides coverage for the group or business that established it"). Utilizing a captive insurance company "can bring tax, economic, and commercial benefits including access to reinsurance markets," while at the same time providing a means "to insure risks that are otherwise difficult to insure on the traditional insurance market." COUCH ON INSURANCE § 39:2; ROBERT PERSONS & KEN BROWNLEE, EXCESS LIABILITY: RIGHTS AND DUTIES OF COMMERCIAL RISK INSUREDS AND INSURERS pt. 1, § 3:24 (Apr. 2025 update), Westlaw EXLINS (listing the reduction of administrative and legal costs, predictability of premiums, and control over claims-handling philosophy as benefits of captive insurance companies).

Oklahoma is one of several states that license and regulate captive insurers. The Oklahoma Captive Insurance Company Act ("Act") requires captive insurance companies[1] seeking to do business in Oklahoma to obtain a license from the Insurance Commissioner ("Commissioner") and maintain a registered office and agent in Oklahoma. 36 O.S.Supp.2022, § 6470.3(B). To obtain a license, a captive insurer must file with the Commissioner, among other things, its organizational documents,[2] evidence of its financial condition, a feasibility study, and a business plan. *Id.* § 6470.3(C)(1). Once licensed, that captive insurer is subject to oversight by the Commissioner, including annual reporting and regulatory examination. 36 O.S.2021, §§ 6470.11, 6470.13.

In your request, you state that public bodies—both state entities and political subdivisions—have increasingly considered forming their own captive insurance companies as an alternative to the private insurance market or other providers. Indeed, several states have enacted statutes specifically allowing the state or its political subdivisions to do exactly that. *See*, *e.g.*, ARK. CODE ANN. § 19-3-506; 215 ILL. COMP. STAT. 5/123C-1(B), (I); IOWA CODE § 521J.1(31). To determine whether Oklahoma can do the same, you have asked whether certain provisions of the Oklahoma Constitution prohibit the State or its political subdivisions from owning a captive insurance company.

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[1] The Act defines "captive insurance company" simply by reference to the seven types of captive insurers that may be formed and/or licensed under the Act. 36 O.S.Supp.2022, § 6470.2. Broadly speaking, the types differ based on their business structure and the entities they insure. *Id.*

[2] A captive insurance company may be organized as a corporation, limited liability company, partnership, statutory trust, or any other lawful form approved by the Commissioner. 36 O.S.2021, § 6470.10(A).

III.
DISCUSSION

Before turning to this question, it is important to understand what this Opinion does not address. ***First***, you advised that this Opinion may inform proposed legislation to specifically allow the State or a political subdivision to form and own a captive insurance company. However, this office has not reviewed or provided input on any draft bills. ***Second***, this Opinion does not address whether any other statutory or constitutional provisions bear upon the question of a State or a political subdivision forming and owning a captive insurance company. Only the provisions you asked this office to consider are addressed in this Opinion. ***And third***, this Opinion does not reach the question of whether any particular entity form—*e.g.*, stock or nonstock corporation, LLC, or similar—would be more or less appropriate to serve as a captive insurance company for the State or a political subdivision.[3]

Turning now to the constitutional provisions referenced in your request, article X, section 15 of the Oklahoma Constitution provides, in pertinent part, as follows:

> [T]he credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State, ***nor shall the State become an owner or stockholder in,*** nor make a donation by gift, subscription to stock, by tax, or otherwise, to ***any company, association, or corporation***.

OKLA. CONST. art. X, § 15(A) (emphasis added). Similarly, article X, section 17 prohibits the Legislature from "authoriz[ing] any county or subdivision thereof, city, town, or incorporated district, to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or levy any tax for, or to loan its credit to any corporation, association, or individual." OKLA. CONST. art. X, § 17. These are simply two versions of the same prohibition: section 15 applies against the State, and section 17 against political subdivisions.[4] *In re Okla. Dev. Fin. Auth.*, 2004 OK 26, ¶ 21 n.12, 89 P.3d 1075, 1082 n.12; *In re Pet. Of Univ. Hospitals Auth.*, 1997 OK 162, ¶ 19, 953 P.2d 314, 320. Together, they operate to "prevent[] the investment of

[3] Your request refers to several entity forms, including statutory trusts. However, statutory trusts present different questions than the other business forms you reference because (1) they are not among the entities listed in article X, sections 15 and 17 of the Oklahoma Constitution, and (2) their formation to perform "authorized or proper" public functions has been enabled by statute since at least the 1950s. *See*, *e.g.*, *Bd. of Cty Comm'rs of Okla. Cnty. v. Warram*, 1955 OK 198, ¶¶ 34-36, 285 P.2d 1034, 1040 (citing 60 O.S.1951, § 176). In its present form, title 60, section 176 of the Oklahoma Statutes authorizes the creation of public trusts "to issue obligations, enter into financing arrangements…and to provide funds for the furtherance and accomplishment of any authorized and proper public function or purpose of the state or of any county or municipality or any and all combinations thereof[.]" 60 O.S.Supp.2025, § 176(A). So while there may be other questions as to the propriety of utilizing a statutory trust to provide captive insurance to the trust beneficiary, that arrangement does not run afoul of the constitutional provisions at issue in this Opinion.

[4] In your request, you also mention school districts. This office has opined that the term "incorporated district" in article X, section 17 includes local school districts. 2003 OK AG 21, ¶ 3. Accordingly, where this Opinion uses the term "political subdivision" as shorthand for entities subject to article X, section 17, the term includes school districts.

public funds in private enterprises." *Lawrence v. Schellstede*, 1960 OK 10, ¶ 24, 348 P.2d 1078, 1082 (interpreting investment clause of article X, section 17).

At first blush, these provisions might seem to prohibit the State and its political subdivisions from owning, investing in, or otherwise contributing funds to any "company, association, or corporation" for any purpose. However, constitutional provisions "must be construed as a consistent whole in harmony with common sense and reason." *Cowart v. Piper Aircraft Corp.*, 1983 OK 66, ¶ 4, 665 P.2d 315, 317; *see also Capital Steel & Iron Co. v. Fuller*, 1952 OK 209, ¶ 11, 245 P.2d 1134, 1138 (stating that a constitutional provision must be interpreted so as to "carry out the manifest intention" of its framers, giving consideration to the "objects contemplated by its mandates, and the evils sought to be avoided"). Despite the broad language, courts have long interpreted these provisions to limit only the ability to redirect public funds to ***private*** entities by way of gift or direct investment. *See Veterans of Foreign Wars v. Childers*, 1946 OK 211, ¶¶ 30-31, 171 P.2d 618, 625 (discussing the purpose of article X, section 15), *Hawks v. Bland*, 1932 OK 101, ¶¶ 19-25, 9 P.2d 720, 722-23 (same); *see also Rural Water Dist. No. 3, Pushmataha Cty. v. Antlers Pub. Works Auth.*, 1993 OK CIV APP 185, ¶ 8, 866 P.2d 458, 460 (describing article X, section 17 as a "prohibition against some of the grosser forms of raids on public money perpetuated in the earlier history of this country") (quoting Maurice H. Merrill, *The Constitutional Rights of Oklahoma Cities*, 21 OKLA. L. REV. 251, 259-60 (Aug. 1968)).

The formation and ownership of a captive insurance company by the State or a political subdivision does not, by itself, implicate these concerns. The purpose of a captive insurance company is to provide insurance coverage to its parent, and perhaps related entities. 36 O.S.Supp.2022, § 6470.3(A). If the only parent is the State or a political subdivision, no public funds would be used for the benefit of a private entity.[5] Rather, the public funds invested in or otherwise directed to the captive insurance company would be used in furtherance of insuring risk faced by the State or the political subdivision that owns it.

This conclusion is also consistent with the Oklahoma Supreme Court's decision in *Lawrence v. Schellstede*, 1960 OK 10, 348 P.2d 1078. In that case, it was alleged that a City of Tulsa insurance policy violated article X, section 17 because the provider was a mutual insurer[6] whose policy stated that each insured "become[s] a member and owner of this mutual insurance corporation." *Id.* ¶ 8,

[5] While not explicitly part of your question, a separate article X, section 15 concern may arise if the credit of the State were to be used to facilitate the creation of a political subdivision's captive insurer. *See* OKLA. CONST. art. X, § 15(A) ("[T]he credit of the State shall not be given, pledged, or loaned to any … municipality, or political subdivision of the State[.]"). For instance, the Oklahoma Supreme Court has held that section 15 prohibits a financing arrangement where a State instrumentality issues bonds for the benefit of a particular municipality, *In re Okla. Cap. Improvement Auth.*, 2012 OK 99, 289 P.3d 1277, or serves as a contingent guarantor of a municipal obligation. *Reherman v. Okla. Water Res. Bd.*, 1984 OK 12, 679 P.2d 1296. To be clear, this office has not been presented with any specifics about how a political subdivision's captive insurance company might be structured. But, these decisions serve as a note of caution regarding State involvement in a captive insurance company that benefits one or more political subdivisions.

[6] A mutual insurance company is "an incorporated insurer without capital stock or shares, ***and is owned by its policyholders***." 36 O.S.2021, § 2103 (emphasis added). Mutual insurers may charge membership fees in addition to premiums, and members are deemed to have the same rights as those of a stockholder (including payment of dividends). *Id.* §§ 2115, 2116, 2123.

348 P.2d at 1080. After reviewing the purpose of article X, section 17, the terms of the policy, and persuasive authority from other states, the court concluded that, notwithstanding the policy's terms, "[m]ere membership in a mutual insurance company does not offend the constitutional limitation unless such membership would constitute a stockholder or create a liability or obligation not present in the case at bar." *Id.* ¶ 24, 348 P.2d at 1082. To hold otherwise, according to the court, would "unduly extend[] the scope of the constitutional limitation," to disallow standard business of a public entity that does not risk its funds being used to benefit private interests. *Id.* ¶ 25, 348 P.2d at 1082–83.

The court's reasoning in *Schellstede* applies equally here. If the State or a political subdivision forms and owns a captive insurance company solely to manage its own risk, that does not, by itself, present an opportunity for public funds to be used to fund private interests. Of course, captive insurance structures can be complicated, and Attorneys General in other states have concluded that public entity participation in captive insurance programs violated their states' analogous constitutional provisions where the captive insurer was a private company or included private interests. Ohio Op. Atty. Gen. No. 2021-24, 2021 WL 5299766, *4 (Nov. 2, 2021); Neb. Op. Atty. Gen. No. 94045, 1994 WL 243685, *2–3 (May 12, 1994); Miss. A.G. Opin., 1987 WL 121805, *1 (Aug. 7, 1987). Accordingly, the State and political subdivisions must carefully structure a public entity captive insurer in a way that avoids participation by or entanglement with private interests.

Finally, it is worth mentioning that state or local involvement in the insurance business would not be a new development. Both the State and its political subdivisions are given broad authority to procure insurance to mitigate risk. *See* 74 O.S.Supp.2024, § 85.58A (directing the Office of Management and Enterprise Services to establish a comprehensive risk management program for all State agencies); and 51 O.S.2021, §§ 167, 169 (authorizing municipalities and counties to purchase general liability insurance and deeming premiums to be "a proper expenditure"). Further, beginning in the 1930s, the State operated essentially as a private insurer providing worker's compensation insurance for public and private employers. *Tulsa Stockyards, Inc. v. Clark*, 2014 OK 14, ¶¶ 3–4, 10, 321 P.3d 185, 188, 190. Indeed, the Oklahoma Supreme Court and the parties in *Tulsa Stockyards* seemed to accept without dispute "that the state may engage in private insurance business for a public purpose." *Id.* ¶ 27, 321 P.3d at 196 (citing OKLA. CONST. art. II, § 31). This history supports the conclusion that article X, section 15 does not bar the State—and by similar logic, article X, section 17 does not bar political subdivisions—from insuring their own risk through the formation and ownership of a captive insurance company.[7]

[7] To be sure, the question in *Tulsa Stockyards—i.e.*, the constitutionality of legislation requiring CompSource Oklahoma to be converted from a department of the State into a private mutual insurer independent of the State—is not a one-to-one comparison to the issue posed here. But the court's approach to the question, and its recitation of the State's history in the insurance business, is nonetheless instructive. For example, the court explains that "Oklahoma law is clear that CompSource … [was] created to conduct insurance business for employers as a private carrier might do so as to be fairly competitive with private insurance carriers and be nothing more than self-supporting." *Id.* ¶ 19, 321 P.3d at 193. If these activities undertaken by the State are permitted by the Oklahoma Constitution, a State-owned captive insurance company to manage the State's risk seems equally allowable.

It is, therefore, the official Opinion of the Attorney General that:

1. **Article X, Section 15 of the Oklahoma Constitution does not prohibit the State of Oklahoma from creating and owning a captive insurance company, as the term is used in the Oklahoma Captive Insurance Company Act, 36 O.S.2021 & Supp.2022, §§ 6470.1–6470.35.**

2. **Article X, Section 17 of the Oklahoma Constitution does not prohibit the Legislature from enacting laws to permit a political subdivision of the State of Oklahoma to create and own a captive insurance company, as the term is used in the Oklahoma Captive Insurance Company Act, 36 O.S.2021 & Supp.2022, §§ 6470.1–6470.35.**

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