

Tenn. Op. Atty. Gen. No. 99-205 (Tenn.A.G.), 1999 WL 1012984

Office of the Attorney General

State of Tennessee  
Opinion No. 99-205  
October 14, 1999

**Insurance adjuster acting as appraiser**

\*1 Honorable Beth H. Harwell  
State Representative  
107 War Memorial Building  
Nashville, Tennessee 37243

**QUESTION**

If an insurance claim calls for an appraisal, is it legal under Tennessee law for a public adjuster or independent adjuster to participate as an appraiser?

**OPINION**

No state statute prohibits an insurance adjuster, public or independent, from appointment under an insurance policy as an appraiser to appraise personal property. The parties to the insurance policy could agree to such appointment, or one of them could waive a challenge on the ground of disqualification by failing to object in a timely manner. Whether a particular public adjuster or independent adjuster may participate in a personal property appraisal will depend on the facts and circumstances, including the terms of the insurance policy and whether the adjuster has a pecuniary interest or is otherwise biased or prejudiced in favor of either party.

**ANALYSIS**

This question arises under an appraisal provision of an insurance policy. We have not reviewed the policy at issue. The General Assembly has enacted statutes to regulate who may perform real estate appraisals. [Tenn. Code Ann. §§ 62-39-101, et seq.](#) The opinion request indicate that the persons under consideration are not licensed in accordance with this act, but information supplied with the request limits the question to an appraisal of personal property that does not relate to real estate or real property. Our research reveals no Tennessee statutes regulating why may perform personal property appraisals. Similarly, we have found no statutes prohibiting a “public adjuster” or “independent adjuster” from performing personal property appraisals.

This Office examined the meaning of the term “independent adjuster” under the statutory exemption of the Private Investigators Licensing and Regulatory Act in [Op. Tenn. Atty. Gen. 94-076 \(July 8, 1994\)](#).<sup>1</sup> Generally, an insurance adjuster makes an adjustment or settlement or determine the amount of a claim against an insurance company. A “staff adjuster” has a fixed and permanent relationship with one company whereas an “independent adjuster” offers his or her services to more than one insurance company. *Id.* In contrast, a “public adjuster” appears to be an insurance adjuster who performs adjusting services for an insured. *See generally Biller Associates v. Rte. 156 Realty Co.*, [52 Conn. App. 18, 725 A.2d 398 \(Conn. App. Ct. 1999\)](#), *cert. granted in part*, [248 Conn. 916, 734 A.2d 566 \(Conn. 1999\)](#).

Tennessee case law follows the general rule that appraisers in an insurance case act in a quasi-judicial capacity and should be free from bias in favor of either party. [Hickerson v. German-American Ins. Co.](#), [96 Tenn. 193, 199, 33 S.W.1041 \(Tenn. 1896\)](#); [14 Couch on Insurance § 50:136 \(2d rev. ed. 1982\)](#). In *Hickerson*, the Court observed that a disinterested appraiser would lack a pecuniary interest in the outcome and would not be biased or prejudiced. [96 Tenn. at 203](#). A challenge to an appraiser’s service on grounds of disqualification may be waived if not timely raised. [Case v. Hanover Fire Insurance Co.](#),

50 Tenn. App. 72, 359 S.W.2d 831 (Tenn. Ct. App. 1962).

\*2 If objection is made, however, case law demonstrates that whether a particular public adjuster or independent adjuster may serve as an appraiser will depend upon individual facts and circumstances. See *Harowitz v. Concordia Fire Ins. Co.*, 129 Tenn. 691, 168 S.W. 163, 163-64 (Tenn. 1914) (insured's appraiser who had furnished estimate to insured's adjuster prior to selection as appraiser gave fair and unbiased testimony); *Farmers' Conservative Mut. Ins. Co. v. Neddo*, 111 Ind. App. 1, 40 N.E.2d 401 (Ind. Ct. App. 1942) (trial court properly allowed jury to determine whether appraiser was disinterested even though appraiser had been engaged as adjuster to investigate claim at issue); *Linford Lounge, Inc. v. Michigan Basic Property Ins. Ass'n.*, 77 Mich App. 710, 259 N.W.2d 201 (Mich. Ct. App. 1977) (public adjuster who had submitted estimate of loss to insured was nevertheless a disinterested appraiser when the adjusting contract was their first business relationship, contract had expired, and insurer produced no evidence that appraiser engaged in prejudicial misconduct); *Equitable Fire & Marine Ins. Co. v. Stieffens*, 154 Va. 281, 153 S.E. 731 (Va. 1930) (appraiser was disinterested despite previous service as appraiser for adjustment bureau representing insurer on claim at issue; appraiser was not an employee of bureau or insurer, had no pecuniary interest in either, and was paid on per diem basis for appraisal services).

In summary, no Tennessee statute prohibits an insurance adjuster, public or independent from appointment under an insurance policy as an appraiser to appraise personal property. The parties to the insurance policy could agree to such appointment, or one of them could waive a challenge on the ground of disqualification by failing to object in a timely manner. Whether a particular public adjuster or independent adjuster may participate in a personal property appraisal will depend on the facts and circumstances, including, but not limited to, the terms of the insurance policy and whether the adjuster has a pecuniary interest or is otherwise biased or prejudiced in favor of either party.

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#### Footnotes

<sup>1</sup> That opinion did not address whether a "public adjuster" is exempt from the Private Investigators Licensing and Regulatory Act; likewise, the issue is not addressed in this opinion, which also does not address questions that, depending upon the facts, might arise concerning the unlicensed practice of law.