



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

December 29, 1969

Honorable Ned Price, Chairman
Honorable Durwood Manford, Member
Honorable Charles D. Mathews, Member
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701

Opinion No. M- 546

Re: Whether H. B. 203 and H. B. 378, Acts 61st Leg., R. S., 1969 (concerning the purchase of liability insurance by State agencies) impose any obligation upon the State Board of Insurance other than the promulgation of an insurance form.

Dear Sirs:

In your recent letter you request an answer to the above captioned question. You point out that Section 1 of H. B. 203 (Acts 61st Leg., R. S., 1969, ch. 797, p. 2357) codified as Section 1 of Article 6252-19a, Vernon's Civil Statutes, reads, in part, as follows:

" . . . All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the Attorney General as to liability. "

The same language appears in Section 1 of Article 6674s-1, Vernon's Civil Statutes, (H. B. 378, Acts 61st Leg., R. S., 1969, ch. 212, p. 617.)

The above quoted provision of the statutes in question is wholly silent as to any duty of the Board to fix or audit the rates which are charged for the insurance in question, and deals only with the subject of the policy form or forms evidencing such insurance coverage. In your letter you point out that your question arises by reason of the following facts: The above quoted provisions are practically the same as those

found in Section 1 of Article 6166z10, V. C. S., which authorizes the Texas Prison Board (now called the Texas Department of Corrections) to insure its employees against liability arising from the operation of motor vehicles. That statute, which was enacted in 1933, provides, in part:

" . . . All insurance taken out by the said Board for and in behalf of the benefits of the State shall be on forms approved by the Insurance Commission as to form and by the Attorney General as to liability. "

You further point out that in the administration of the statute last mentioned the State Board of Insurance not only approved the language of the contract of insurance through which the Texas Prison Board obtained coverage under Article 6166z10, but also it undertook to audit the insurance account for the purpose of determining whether correct rates and rate modifiers had been applied. This practice has continued down to the present date. After the Board has ascertained that the policy contains both the correct form and the correct rates, it is transmitted to the Attorney General setting forth such facts. You further point out that the practice of making an audit of the rates under the 1933 statute has not been burdensome in that it requires only approximately ten to sixteen man hours per year, but that if it is followed in the administration of the new statutes above mentioned it would involve approximately one thousand man hours per year, for which no appropriation has been made by the Legislature.

In our opinion the assumption of the rate-checking function in the administration of Article 6166z10 would not constitute an administrative interpretation of the statute which, by reason of legislative acquiescence thereto, would change the meaning of the statute so as to include rate-checking as one of the duties of the Board under the statute. Even if it constituted an interpretation, rather than a mere practice based upon general administrative authority, it could not affect the meaning of the statute. The statute is not ambiguous and the administrative practice thereunder is not thus relevant to its construction. The rules of statutory construction, including the doctrine of legislative acquiescence, would not be applicable. McCallum v.

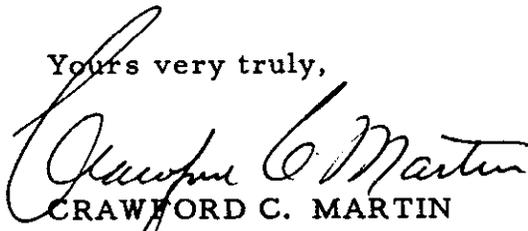
Associated Retail Credit Men of Austin, 41 S. W. 2d 45 (Tex. Com. App. 1931). See Calvert v. Kadane, 427 S. W. 2d 605 (Tex. Sup. 1968). In enacting the above quoted provisions, the Legislature did not impose upon the Board any duty other than the approval of policy forms.

The Board does have, however, a duty under Articles 1.04(b) and (c) and 5.01, Texas Insurance Code, to fix and maintain fair, reasonable, and just insurance premium rates in accordance with its published rules and regulations in this connection. The statutes must be read in pari materia with Articles 6252-19a and 6674s-1. The Commissioner's duty to enforce such regulations may, in the Board's discretion, involve an auditing of the rates as a means of enforcement. The authority to make such an audit is implicit in these statutes when taken together, but the extent of any such audit lies within the sound discretion of the Board, and consonant with the availability of the funds appropriated for such enforcement purposes. We will not attempt to relate here the various circumstances under which a duty could arise to require an audit.

SUMMARY

Section 1 of Article 6252-19a, V. C. S. (H. B. 203, Acts 61st Leg., R. S., 1969, ch. 797, p. 2357) and Section 1 of Article 6674s-1, V. C. S. (H. B. 378, Acts 61st Leg., R. S., 1969, ch. 212, p. 617) impose no obligation upon the State Board of Insurance other than the approval of policy forms; however, such statutes construed in pari materia with Articles 1.04 and 5.01, Texas Insurance Code, require the State Board of Insurance to fix and maintain fair, reasonable, and just insurance premium rates, and the auditing of rates may become a means of enforcement, which matter is left to the sound discretion of the Board and consonant with the availability of funds for such enforcement purposes.

Yours very truly,


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