



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL,
ATTORNEY GENERAL

May 17, 1973

The Honorable Price Daniel, Jr.
Speaker of the House of Representatives
State Capitol Building
Austin, Texas

Letter Advisory No. 39
Re: The constitutionality of
the provisions of S. B. 854

Dear Speaker Daniel:

We have your request for an opinion as to the constitutionality of Senate Bill 854, amending the statutes regulating accident and health insurance policies, and particularly those portions of the Bill making it applicable to policies which have been issued prior to the effective date of the Bill and which are thereafter renewed, extended or amended.

Basically, it is the purpose of the Bill to require that, where a policy of accident and sickness insurance provides coverage for additional newborn children of the insured, there may be no disclaimer, waiver or other limitation postponing or in any way affecting the immediate insurability of the newborn infant.

The language which you question appears in Section 2 of the Bill, which reads in part:

" . . . This Act shall take effect September 1, 1973, and shall apply to all accident and sickness policies issued and delivered in the State of Texas or issued for delivery in the State of Texas after that date but shall not apply to any policies issued and delivered in the State of Texas or issued for delivery in the State of Texas prior to the effective date hereof. This Act shall apply to any policies issued and delivered in the State of Texas or issued for delivery in the State of Texas prior to the effective date hereof which are renewed, extended or amended after effective date hereof. The insurer may charge such additional premiums as are provided in its rating schedule for such coverage by the addition of the newborn child" (Emphasis added).

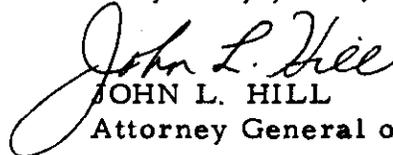
Section 10 of Article 1 of the Constitution of the United States provides, in part, that no state shall pass any law impairing the obligation of contracts. Section 16 of Article 1 of the Constitution of Texas contains almost identical language.

It is apparent that the drafter of Senate Bill 854 was aware of these provisions and attempted to avoid a violation of them. The provisions of the Bill do not apply to existing, long term contracts. They do apply to new contracts and they also apply to renewals, extensions or amendments of existing contracts which have expired or would if not renewed or extended. In law, the renewal or extension of a policy is a new contract of insurance. We believe that the same may be said of amendment of a policy, i. e., a new contract is formed supported by new consideration. Therefore we do not see that the provision in question would impair the obligation of any existing contract.

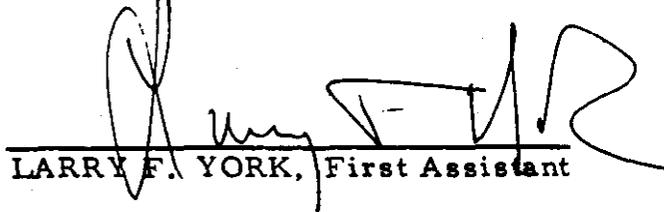
Furthermore, the constitutional sanctity of contracts is not absolute. Where the public interest is involved, a balance must be made between the fundamental constitutional freedom to contract and the interest of the State in the welfare of its citizens. It is our opinion that, if any obligation of contract is impaired at all, the guarantee of freedom to contract must yield to permit a reasonable regulation of insurance in the interest of protection of the public.

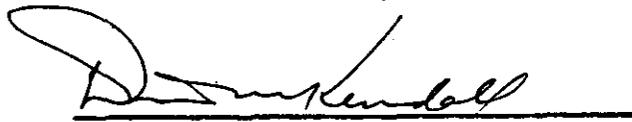
It is our opinion, therefore, that the provisions of House Bill 854 as presented to us are constitutional and do not violate those provisions of the Federal and State Constitutions prohibiting impairment of the obligations of contracts. Trinity Universal Insurance Co. v. Rogers, 215 S. W. 2d 349 (Tex. Civ. App., Dallas, 1948, no writ); Republic National Life Insurance Co. v. Blain, 425 S. W. 2d 347 (Tex. 1968); Liverpool and London and Globe Insurance Company v. Swann, 382 S. W. 2d 521 (Tex. Civ. App., Beaumont, 1964, no writ); Palmer v. Unauthorized Practice Committee of the State Bar, 438 S. W. 2d 374 (Tex. Civ. App., Houston, 1969).

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee