



STATE BOARD OF INSURANCE

1110 San Jacinto

Austin, Texas 78701-1998

(512) 463-616

JAMES E. SAXTON, JR., Chairman
RICHARD F. REYNOLDS, Member
JO ANN HOWARD, Member

PHILIP W. BARNES, Commissione
ERNEST A. EMERSON, Fire Marshal
NICHOLAS MURPHY, Chief Clerk

January 8, 1991

RQ-15

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711

RECEIVED

JAN 08 91

Opinion Committee

Attention: Opinions Committee

Dear General Morales:

As you know, this agency has general jurisdiction over solvency matters relating to insurance companies. As part of this jurisdiction, this agency, in appropriate situations can attempt through conservation to rehabilitate an insurer whose solvency is impaired. An insurance company experiencing solvency problems may be placed in conservation pursuant to Article 21.28-A, and as part of any rehabilitation effort, the conservator may request that insurers who are members of the guaranty association be assessed to provide funds for rehabilitation under Articles 21.28-C and 21.28-D of the Insurance Code.

In the past, assessments made to provide funds for rehabilitation have been made while an insurance carrier was declared impaired and was in conservation, with the funds to be used to pay claims as defined by the above referenced Acts. It has come to my attention that in the last two years, in a very limited number of situations, the guaranty fund members have been assessed for purposes of providing funds for loans to an impaired insurer who is released from conservation and allowed to spend the assessed funds after its release from conservation. I believe that this particular approach raises an important legal question.

I would like to request that you render a formal opinion relating to the following question:

Under Article 21.28-A, Insurance Code, in conjunction with Article 21.28-C or 21.28-D, Insurance Code, may funds obtained through assessment of guaranty fund members be used to provide funding to an impaired insurer through a loan or other arrangement for use after the insurer is released from conservation and is no longer designated an impaired insurer.

The Honorable Dan Morales
January 8, 1991
Page 2

Since there may be some question as to our legal authority to engage in such an arrangement, this agency will suspend the use of this rehabilitation approach until such time as we receive your written opinion as to its legality. We would appreciate a response to this request at your earliest convenience.

If you have any questions regarding this matter, you may refer them to Sarah Haynie, General Counsel for the Board.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Philip W. Barnes". The signature is written in dark ink and includes a long horizontal flourish at the end.

Philip W. Barnes
Commissioner of Insurance

PWB:SHH:mc