



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

October 25, 1963

This Opinion
Affirms Opinion

S-179

Honorable Wm. Hunter McLean
Chairman, State Board of Insurance
1110 San Jacinto
Austin 14, Texas

Opinion No. C-167

Re: Reconsideration of
Opinion S-179

Dear Mr. McLean:

Your recent opinion request states that the State Board of Insurance now has under consideration insertion of the following rule in the Texas General Basis Schedules:

"DEFERRED PAYMENT OF PREMIUMS. Unless otherwise specifically provided in the General Basis Schedules, interest of 6% per annum shall apply to all premium payments deferred to an agreed stipulated date. This provision, however, is not intended to affect the usual customary open accounts."

On October 22, 1955, the then Attorney General issued Opinion No. S-179, summarized as follows:

"The Board of Insurance Commissioners of the State of Texas does not have the authority to regulate the rate of interest charged on deferred premiums."

Opinion No. S-179 is based upon those portions of Articles 5.25 and 5.42, Texas Insurance Code, quoted as follows:

"Art. 5.25. Board Shall Fix Rates

The Board of Insurance Commissioners shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Board shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower

the same, or any part thereof, as herein provided." (Emphasis supplied)

"Art. 5.42. Not Retroactive

The provisions of this subchapter shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policyholders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this subchapter."

This opinion concludes by holding that the Board "does not have the authority to regulate the rate of interest charged by companies on deferred premiums, as the amount of interest charged is not a part of the policy premium determined by the Board, but constitutes a charge separate and apart from the policy premium. . ."

We are not directed to any statute purporting to give the State Board of Insurance authority to regulate the rate of interest to be charged on deferred premiums on fire insurance. On the contrary, Articles 5.25 and 5.26, Texas Insurance Code, give the Board authority to regulate premium rates, while Article 5.42 constitutes express legislative permission for the deferment of premium payments and the adoption of regulations by each insurance company concerning the collection of such premiums.

In the case of Commercial Standard Insurance Company v. Board of Insurance Commissioners, 34 S.W.2d 343 (Civ.App. 1930, error ref.), the issue before the Court was whether or not the Board had authority to promulgate an order fixing the amount of commissions which fire insurance companies might pay to their local agents. The Court noted the statutes controlling the regulation of fire insurance (now subchapter C of Chapter 5 of the Insurance Code) and stated that:

"The statutes vest in said Board very extensive and exclusive powers over premium rates and provide for securing information on which to fix, alter, amend, or modify same."

This is still true of these statutes. In the course of its opinion denying the Board's authority to fix the amount of commission, the Court went on to hold as follows:

"In all instances, however, such powers relate to fixing maximum premium rates; and nowhere is any express authority given by law to regulate or control any of the items, elements, or charges, entering into or going to make up the aggregate premium rate.

". . . .

". . . these statutes, having undertaken in considerable detail to prescribe the powers and duties of the Board relative to such maximum rate only, without giving authority to them to fix or regulate the different elements of expense entering into that rate, must be construed as a legislative denial of such power."

The Court further held:

"The Board can exercise only the authority conferred upon it by law 'in clear and unmistakable terms, and will not be deemed to be given by implication, nor can it be extended by inference, but must be strictly construed.' 51 C.J. 56; State v. Robinson (Tex.Sup.), 30 S.W.2d 297." (Emphasis supplied)

Had the Legislature desired to confer authority upon the Board to regulate or specify interest rates charged upon deferred premiums, it easily could have done so. Instead, Article 5.42 has not been amended since the release of Opinion No. S-179, some eight years ago.


In view of the foregoing authorities and in the absence of any language of the Insurance Code purporting to give the Board authority to regulate rates of interest upon deferred premiums, we affirm the holding of Opinion No. S-179 and respectfully advise you that the State Board of Insurance does not have the authority to promulgate the order set out in your opinion request.

SUMMARY

The State Board of Insurance does not have the authority to regulate the rate of interest charges on deferred premium payments. Opinion No. S-179 is affirmed.

Yours very truly,

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Attorney General of Texas

By 
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DDM/smd

APPROVED:

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