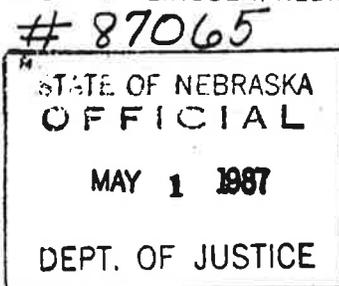


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: April 30, 1987

SUBJECT: Proposed Amendment(s) to Claims Payable by the Nebraska Property and Liability Insurance Guaranty Association

REQUESTED BY: Senator R. Wiley Remmers, Chairman
Banking, Commerce & Insurance Committee

WRITTEN BY: Robert M. Spire, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have requested the opinion of this office concerning the constitutionality of proposed amendments to Legislative Bill 700. The proposed amendment(s) would serve to create an exception to covered claims for certain policyholders of insolvent insurers provided in Neb.Rev.Stat. §44-2406 (Supp. 1986).

It is our opinion that the proposed amendment would constitute special legislation in violation of Article III, §18 of the Constitution of the State of Nebraska.

Neb.Rev.Stat. §44-2406 (Supp. 1986) provides, in summary, that the Nebraska Property and Liability Insurance Guaranty Association investigates, hears, settles and determines claims of policyholders of member companies which have become insolvent. The claims have prescribed dollar limitations of three hundred thousand dollars or an amount not exceeding the face amount of the policy from which the claim arises.

The part of the amendment which appears to be the focus of your inquiry provides that: "(b) the association shall pay the amount of a judgment against a school district arising out of an occurrence prior to or on November 16, 1985, if the insurer becomes an insolvent insurer prior to January 1, 1987." Accordingly, the amendment would create an exception to the statutory dollar limits for covered claims for a school district meeting this specific criteria.

It is for the Legislature to classify objects of legislation and if the classification is reasonable and not arbitrary, it is a legitimate exercise of legislative power. Our Supreme Court

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Senator R. Wiley Remmers
Page -2-
April 30, 1987

has held that a statute must be general and uniform throughout the state and must operate alike on all persons of a class with reference to relations and circumstances provided for. State v. Edwards, 211 Neb. 380 (1982). Accordingly, it is appropriate to review the application of the proposed amendment to the special class to be created by the amendment.

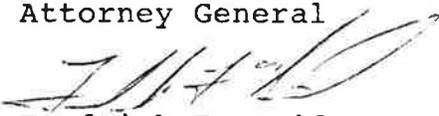
The amendment serves to relieve only school districts as policyholders from the statutory restrictions applicable to covered claims. Further, the exception is so narrowly constructed as to exclude members of the class created by the exception. In State ex rel. Douglas v. Marsh, 207 Neb. 598 (1980), it was held by the Nebraska Supreme Court that a classification which limits the application of the law to a presently existing class and leaves no room for an increase in the members of the class is special and a violation of the Constitution of the State of Nebraska.

The special class created by the proposed amendment consists of school districts having judgments against them arising out of an incident occurring prior to or on November 16, 1985, if the insurer becomes insolvent prior to January 1, 1987. Thus, school districts having judgments against them would not be members of the class if the incident occurred after November 16, 1985, or if the insurer did not become insolvent. School districts in similar circumstances would therefore be precluded from the special class created.

In conclusion, it is our opinion that the proposed amendment would render Neb.Rev.Stat. §44-2406 (Supp. 1986) unconstitutional in that it contains an arbitrary and unreasonable classification prohibited by the Constitution of the State of Nebraska.

Sincerely,

ROBERT M. SPIRE
Attorney General


Fredrick F. Neid
Assistant Attorney General

FFN:jem

CC: Patrick J. O'Donnell
Clerk of the Legislature

3/19

APPROVED:


Attorney General