

Letter from State Law Department on Senate Bill No. 373

April 26, 1963.

Honorable J. Millard Tawes
Governor of Maryland
State House
Annapolis, Maryland

Re: Senate Bill 373

Dear Governor Tawes:

I have reviewed Senate Bill 373 and find that several questions are raised as to its legal sufficiency.

This bill would amend the insurance laws so as to enable three directors of any domestic insurance company to at any time disregard the provisions of regular by-laws, acts of legislature or the company charter and adopt emergency by-laws during a "national emergency".

Article 44, Maryland Declaration of Rights, states that the provisions of the Constitutions of the United States and of Maryland apply as well in time of war as in time of peace. Therefore, the same constitutional standards must be applied even while the nation may be under attack.

The difficulty with this bill is that the standards it sets up are too vague and indefinite. For instance, in paragraph (c) (3), three vice-presidents of the company can take over the powers of the board of directors "if there are no surviving directors". In a situation where there is an enemy attack, it is not likely that it would ever be known which directors are surviving and which are not. It would seem that the unavailability of such directors would be a more proper test than their survivorship.

Further, the term "national emergency" is not defined sufficiently to prevent arbitrary determination by selfish interests as to when such emergency in fact exists. The extraordinary power in derogation of the charter, by-laws or statutes governing the management of a domestic insurance company, given to three directors, may be under this bill invoked upon the happening of a national emergency. The statute does not clearly define what such a national emergency is, nor who is to determine when such a national emergency exists and when such emergency begins and ends. The definition in the statute of an emergency as either "caused by an attack on the United States or by a nuclear, atomic or other disaster" leaves wide latitude for interpretation and does not place the responsibility of determination of what "disaster", for instance, constitutes a national emergency.

Although this bill has a laudatory purpose, it is my belief that it should receive further study to clarify possible constitutional objections.

Sincerely,

(s) Thomas B. Finan,

Attorney General.

TBF/imb