



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION NO. 85-103

April 11, 1985

Mr. Mahlon A. Martin
Director
Department of Finance and Administration
P.O. Box 3278
Little Rock, Arkansas 72203

Dear Mr. Martin:

This is in response to your inquiry regarding the Deferred Compensation Plan as administered by the State Employees' Insurance Advisory Committee pursuant to Act 669 of 1975 as amended by Act 937 of 1977.

In the event a company from which the State of Arkansas has purchased an annuity contract goes bankrupt, and into liquidation or rehabilitation, those state employees whose deferred income was used for that annuity purchase would have a limited recourse against the State as provided in Ark. Stat. Ann. § 12-1624 (Repl. 1983) for an amount limited to that amount of the individuals deferred income that has not been expended by the state in the purchase of the annuity contract in question. Any such claim would be pursued through the State Claims Commission.

For that amount not includible in the above claim the recourse of the state employee/participant would depend upon whether the insurance company in question will be undergoing liquidation or rehabilitation.

Under liquidation, the state employee's/annuity participant's recourse would be provided for in the Uniform Insurers Liquidation Act, Ark. Stat. Ann. § 66-4821 et seq (Repl. 1983) which determines the priority of distribution of the general assets of an insurance company which is being liquidated. Ark. Stat. Ann. § 66-4827(3) (Repl. 1983) considers a claim under an annuity policy, whether for proceeds or investment value, as a "Class 3" priority. These claims are subordinate to classes one and two.

In the event a company from which the State of Arkansas has purchased an annuity contract goes bankrupt, and into rehabilitation, the state employee's/participant's claim would be subject to a rehabilitation order issued by the circuit court. Any objections to a proposed rehabilitation plan by a state employee/participant would be brought forth in the circuit court hearing from which the rehabilitation order is issued.

3
Regarding your question concerning the liability of the State Employee Insurance Advisory Committee, a claimant is unable to maintain an action against a member of the Committee if the claimant is actually attempting to sue the State of Arkansas because Act 5, § 20, of the Arkansas Constitution provides that the State "shall never be made a defendant in any of her courts."

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Kent Jolliff.

Sincerely,


STEVE CLARK
Attorney General

SC/KJ/pt