It is, therefore, my opinion that the requirement of resident petition was not intended by the General Assembly to be included with applications for "club" permits located in unincorporated areas, that such requirement was intended to be applicable only to "restaurant" establishments.

OFFICIAL OPINION NO. 23

April 23, 1964

Mr. Harry E. McClain
Insurance Commissioner
Department of Insurance
509 State Office Building
Indianapolis, Indiana

Dear Mr. McClain:

Your letter of March 16, 1964, requesting my Official Opinion presented the following questions and reads, in part, as follows:

"The Department now has before it an annual financial statement, as of December 31, 1963 of a domestic capital stock company, incorporated November, 1952, authorized to make the kinds of insurance described in sub-sections (a) and (b) of Class I of section 59 in which the surplus is reported to be slightly under $22,000.

"We, therefore, ask your official opinion on the following:

"1. Is it required that the above mentioned company maintain a surplus of not less than $50,000?

"2. Does the anti-retroactive provisions of this law apply only to the 1955 amendments or does it likewise apply to the 1959 amendments or any part thereof?"

The Acts of 1935, Ch. 162, Sec. 74, as found in Burns' (1952 Repl.), Section 39-3614, reads, in applicable parts, as follows:
"A domestic capital stock company organized under this law shall have capital stock paid up in money as follows:

(a) To make either one of the kinds of insurance described in sub-sections (a) and (b) of class I of section fifty-nine a paid-in capital stock of not less than one hundred thousand dollars [$100,000], of which twenty-five thousand dollars [$25,000] must be deposited with the department in cash or the direct or indirect obligations of the United States * * *

* * *

(e) Each domestic capital stock company organized under this law, in addition to the capital in and by this section required, shall have a surplus paid-in equal to at least fifty [50] per cent of the capital required of such company."

This section was amended in 1955 to increase the required amount of paid-in capital to two hundred thousand dollars ($200,000), of which sum fifty thousand dollars ($50,000) must be deposited with the department.

This section was further amended in 1959 with an additional paragraph added to the sections. Burns' (1963 Supp.), Section 39-3614, reads, in part, as follows:

(e) Each domestic capital stock company organized under this law except as hereinafter provided, in addition to the capital in and by this section required, shall have a surplus paid-in equal to at least fifty per centum [50\%] of the capital required of such company.

"Each domestic capital stock company organized under this law to make one or all of the kinds of insurance described in subsections (a) and (b) of class I of section 59, shall have a paid-in surplus of at least two hundred fifty thousand dollars [$250,000] which surplus shall be maintained at all times at not less than fifty thousand dollars [$50,000]."

Another section of the statutes should be considered in connection with the question of what surplus must be main-
tained by a company. The Acts of 1935, Ch. 162, Sec. 17, as found in Burns' (1952 Repl.), Section 39-3314, reads as follows:

"The commissioner shall have power to revoke or suspend the authority to do business in this state of any company which refuses to permit such examination and to revoke or suspend any certificate of authority when any condition prescribed by law for granting it no longer exists."

The company giving rise to the questions that are the subject of this Opinion was incorporated in November, 1952 and was authorized to make the kinds of insurance described in Burns' 39-3614, supra. Under this section, this domestic capital company was required to deposit twenty-five thousand dollars ($25,000) with the department. This company was further required to have a surplus paid-in equal to at least fifty (50) per cent of the capital required of it. Thus, the company must have had a surplus of fifty thousand dollars ($50,000) before a certificate of authority could have been issued to it.

Burns' 39-3314, supra, provides that the Department of Insurance has the power to revoke or suspend a certificate of authority when any condition prescribed by law for granting it no longer exists. Therefore, the subject company would have been required to maintain a surplus of fifty thousand dollars ($50,000) and no subsequent amendment of the Insurance Law has reduced this requirement.

The Acts of 1955, Ch. 316, Sec. 3, reads as follows:

"This act shall apply only to companies organized under this law after the effective date hereof. Nothing contained herein shall impair the rights of existing companies, whose qualifications shall be determined by applicable law prior to this amendatory act."

Thus, by definition contained in the 1955 amendment to the Acts of 1935, Burns' 39-3614, supra, the changes made in 1955 were not retroactive.

The Acts of 1959, Ch. 13, Secs. 2 and 3, read as follows:
Sec. 2.

"All laws and parts of laws in conflict herewith are hereby repealed."

Sec. 3.

"Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage."

But the Indiana Constitution, in Art. 1, Sec. 24, provides as follows:

"No ex post facto law, or law impairing the obligation of contracts, shall ever be passed."

Further, the Indiana statutory law provides in 1 R. S. 1852, Ch. 92, Sec. 2, as found in Burns' (1946 Repl.), Section 1-302:

"No rights vested * * * under existing laws shall be affected by repeal thereof, but all such rights may be asserted * * * as if such laws had not been repealed."

In Chadwick v. Crawfordsville (1940), 216 Ind. 399, 413, 414, 24 N. E. (2d) 937, the Indiana Supreme Court held that:

"Unless a contrary intention is expressed, statutes are treated as intended to operate prospectively, and not retrospectively * * *"

In the Aurora & Laughery Turnpike Co. v. Holthouse & Another (1855), 7 Ind. 59, 61, the court said:

"* * * The charter of this company constituted a contract between her and the state. It secured to the company a vested right in her franchise. No doubt this right was subject to any cause of forfeiture known to the law at the time of the act of incorporation, and up until the above act of 1852. Has the latter act imposed on the company a new cause of forfeiture, which did not exist prior to its passage? If it has, then its operation must be held prospective; otherwise it would be a retroactive infringement of a vested right, and therefore in conflict with the constitution."
One element that must always be considered when deter-
mining whether a statute regulating corporations is basically
retroactive and improper, is the right of the state to exercise
"police power" and thereby add additional controls over
existing corporations.

In discussing the police power of the state in relation to an
existing contract, the Supreme Court of Indiana in the case
of Bruck et al. v. State ex rel. Money (1950), 228 Ind. 189,
91 N. E. (2d) 349, states on page 198 as follows:

"There can be no question that in Indiana the status
of permanent teacher with an indefinite contract is
based wholly upon contract and when this status was
created by a contract under Section 1, Ch. 97, page
259, Acts of 1927, as in the instant case, it cannot be
impaired by future legislation except in a proper
exercise of the police power of the state *

The court adopts what they consider a reasonable rule.

"We recognize the impossibility of fully defining the
police powers of a state. 11 Am. Jur., Constitutional
Law, § 246, p. 970; 16 C. J. S., Constitutional Law,
§ 175, Cl. b, p. 541; 12 C. J., Constitutional Law, § 416,
p. 908. Reasonable limits of this power have been
stated thus:

"'Police power is the power inherent in a govern-
ment to enact laws, within constitutional limits, to
promote the order, safety, health, morals, and general
welfare of society. As applied to the powers of the
states of the American Union, the term is also used to
denote those inherent governmental powers, which,
under the federal system established by the constitution
of the United States, are reserved to the several states.'
16 C. J. S., Constitutional Law, § 174, p. 537."

That the proper exercise of the police power is applicable
to the insurance industry is clearly stated in National Colored
Aid Society v. State ex rel. Wilson, Prosecutor (1935), 208
Ind. 380, 393, 196 N. E. 240, wherein the court stated:

"It is also well recognized that the business of insur-
ance is quasi-public in character, and the right to
engage in it is a franchise, at least so far as corporations are concerned, and accordingly it is both competent and necessary for the state, under its police power, or as the creator of corporations to determine who may engage in the business within its boundaries, and to prescribe terms and conditions on which the business may be conducted * * *

An exhaustive discussion of the police powers of the state is to be found in the 1953 O. A. G., page 51, No. 13. This Opinion was in reply to questions arising in regard to the application of the Indiana Insurance Law of 1935, as it affected assessment insurance companies organized under Ch. 195, Acts of 1897. It distinguishes between the retroactive effects of statutes on pre-existing companies and the regulatory effects of laws that require the exercise of the police power, and holds that the Department of Insurance may enforce the regulatory requirements of the Acts of 1935 under its police power, but that such laws cannot diminish or destroy the rights under franchise held by pre-existing companies so long as such rights are lawfully employed.

However, the present question does not require a determination of whether the 1959 amendment, if applied to insurance companies in existence prior to its enactment, would be retroactive and therefore improper, or would be considered as a proper exercise of the police power. This results from the fact that the 1959 amendment in no way increased the requirements for previously incorporated stock insurance companies. It therefore did not affect vested contractual rights.

The Acts of 1935, state that each domestic stock company shall have a surplus paid-in equal to at least fifty (50) per cent of the capital (one hundred thousand dollars) required of such company. The amendment of 1959 stated that the surplus of each domestic capital stock company shall be maintained at all times at not less than fifty thousand dollars. Thus the amendment imposed no new cause of forfeiture on the company; it did, however, more clearly and definitively state what surplus must be maintained by each domestic capital stock company.

In answer to your first question it is my opinion that the company to which you refer must maintain a surplus of at
least fifty thousand dollars ($50,000) since it was required to have that much surplus before it could be issued a certificate of authority.

In answer to your second question, the amendments to the Acts of 1935 which were enacted in 1955 were, by definition, prospective and not retroactive. The amendment of 1959 should also be considered to be prospective and not retroactive because it did not affect any vested rights of a previously incorporated company, or change the requirement of such company.

OFFICIAL OPINION NO. 24

April 30, 1964

Mr. Allen Nutting, Commissioner
Bureau of Motor Vehicles
401 State Office Building
Indianapolis, Indiana

Dear Mr. Nutting:

This is in response to your recent request for an Official Opinion with your question, which reads as follows:

"Do the laws of Indiana require the Bureau of Motor Vehicles to suspend all registration certificates and plates registered in the name of a person convicted of driving under the influence until such time as the Bureau receives proof of future financial responsibility (SR-22 owner's policy) covering any motor vehicle registered in the name of the convicted driver?"

The answer to your question is to be found within the provisions of the "Indiana Motor Vehicle Safety-Responsibility and Driver Improvement Act" as found in the Acts of 1947, Ch. 159, as amended, as found in Burns' (1952 Repl.), and (1963 Supp.), Section 47-1044 et seq.

Although amended without change in 1951, the original act in Burns' 47-1045(n), supra, provides as a matter of definition: