

**OPINION
51-180**

January 25, 1951 (OPINION)

TAXATION

RE: Hail Tax

You inquire in your letter of January 24, 1951, on behalf of the Senate Judiciary Committee:

1. Whether the commissioner of insurance can use the interest income from the hail fund for the purpose of reducing the amount of hail indemnity tax necessary to pay hail losses.
2. Whether or not the commissioner of insurance can use the surplus hail fund or any part of it to reduce hail indemnity tax necessary to pay all losses.
3. Whether or not the interest and other income of the hail fund should be added to the fund, when not needed to pay losses in excess of ten percent, even though such fund be then in excess of three million dollars.
4. Whether or not the hail law requires the commissioner of insurance to make a hail indemnity tax levy, the next year after surplus funds have been used, sufficient to reimburse the surplus fund for the moneys so used, even though the fund be then in excess of three million dollars.

I call your attention to sections 26-2231 and 26-2233, NDRC 1943, and section 26-2232 of the 1949 Supplement, which read as follows:

26-2231. COMMISSIONER OF INSURANCE TO DETERMINE MONEYS TO BE RAISED BY HAIL INDEMNITY TAX LEVY; ITEMS INCLUDED. The commissioner of insurance, on or before the fifteenth day of October in each year, shall ascertain the amount of money which must be raised by the levy of hail indemnity taxes, which shall be the aggregate amount of moneys required for the following purposes:

1. The total payment of all losses caused by hail to crops insured by the state hail insurance department;
2. The payment of interest on certificates of indebtedness issued by the department;
3. The payment of interest at the rate of five per cent per annum from the date of registration to the date of call for payment by the state treasurer on all indemnity warrants issued by the department which are not payable in cash when issued;
4. The payment of anticipated refunds or abatements of hail insurance premiums; and

5. The maintenance and operation of the state hail insurance department for the succeeding year."

26-2232. COMMISSIONER DETERMINES RATE OF HAIL INDEMNITY TAX LEVY; COLLECTION OF HAIL INDEMNITY TAX BY COMMISSIONER WITH DISCOUNT; CERTIFICATE TO COUNTY AUDITORS; DUTIES OF COUNTY AUDITORS AND TREASURERS. The commissioner of insurance shall determine the rate of levy for the hail indemnity tax in each of the districts described in Section 26 2230. When eight dollars per acre insurance is carried, the indemnity tax shall be as much greater than the tax for five dollars per acre insurance as eight is greater than five. As soon as possible after the hail indemnity tax rates have been determined, the commissioner shall send a statement by mail to each owner of real property against which the hail indemnity tax has been levied, setting forth the amount of said hail indemnity tax. The commissioner shall allow a five per cent discount to all persons who shall pay all of the hail indemnity tax levied on any tract or parcel of real property in any one year in full on or before the fifteenth day of November of the year in which such hail indemnity tax has been levied. As soon as possible after the fifteenth day of November of each year, the commissioner through the state hail insurance department, shall file with the county auditor of each county a complete list of descriptions of lands within such county upon which the state hail insurance department has carried the protection for the then current season based on the regular applications for hail insurance on file in his office after cancellation thereof and changes therein have been considered and cash payments have been credited. Each county auditor shall enter the unpaid hail indemnity tax in the tax list for his county and spread the same upon the tax rolls thereof in separate columns showing the amount of indemnity tax charged against each description of each tract, parcel, or subdivision of land insured with the department using the list described in this section as the basis therefor. The several county auditors and county treasurers shall make proper corrections on their records and shall cause deductions of hail indemnity taxes to be made from time to time upon receipt of certification from the state hail insurance department. (Approved February 27, 1947)"

22-2233. USE OF SURPLUS WHEN LOSSES EXCEED TEN PER CENT OF RISK CARRIED; SUBSEQUENT LEVIES. If the total amount necessary for indemnity tax for any year equals more than ten per cent of the risk carried by the state hail insurance department for such year, the commissioner of insurance may use any moneys in the surplus of the state hail insurance fund to pay the difference between the moneys actually obtained by the levy for hail indemnity tax and the amount actually needed to pay all legal indemnities for such year. In the following or in any succeeding year or years when the indemnity for hail losses is not in excess of an average of ten per cent of the risk carried by the department, the commissioner of insurance shall include in the levy for hail indemnity tax such sum as may be necessary to reimburse the surplus fund for the moneys so used."

In our opinion the sections quoted direct the disposition of the hail insurance fund. The interest accruing to the three million dollars surplus fund established by the legislative assembly should be accrued to it and be used only as is specified by statute which is, therefore, for the purpose of paying losses when the ten percent levy is insufficient for that coverage.

The accrual of interest to that fund is not for the benefit of policyholders in any one single year, but accrues to the interest of all of the land-holding taxpayers who established that fund in the first instance.

The interest and other income must be added to the surplus account without regard to whether said surplus is over or under three million dollars. The law gives the commissioner no authority to expend any portion of that surplus except to pay losses. The surplus fund is a revolving fund which in all cases must be reimbursed as provided by section 26-2233 without regard to the size of the surplus fund.

It is our opinion that the hail law requires the commissioner of insurance to make hail indemnity tax levies the next year after surplus funds have been used sufficient to reimburse the surplus fund for the moneys so used.

The commissioner has no discretion to fail to do what the statutes specifically directs him to do.

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