

State Board of Hail Insurance—Power to Alter Report of Appraisers With Respect to the Adjustment of Losses.

Section 360 of the Revised Codes of 1921 construed to confer authority upon the State Board of Hail Insurance to review all reports of appraisers and to adjust all losses.

E. K. Bowman, Esq.,
Chairman State Board of Hail Insurance,
Helena, Montana.

My dear Mr. Bowman:

I have your letter in the matter of the adjustment of certain hail insurance for the year 1921, from which it appears that the adjuster allowed a loss of 90 per cent on the oat crop, and that, while this allowance was perfectly satisfactory to the parties who sustained the loss, it was deemed excessive by the Hail Insurance Board, and was, for that reason, reduced by the Board.

The insured has questioned the right of the Board to reduce the award of the appraiser without resorting to arbitration, as provided in Section 360 of the Revised Codes of 1921. The provisions of this section, which are applicable, are as follows:

"In case the party who has sustained the loss is dissatisfied with and refuses to accept the adjustments made by the official appraisers, then he shall have the right to appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person, and the three shall then proceed to adjust the loss in the same manner as specified in the preceding section and the judgment of the majority shall be the judgment of said appraisers, and shall be binding upon both parties as the final determination of said loss; * * *

"The state board of hail insurance shall examine all reports of appraisers and verify same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses, and conduct examinations and do all things necessary to secure a fair and impartial appraisal of losses by hail."

It is observed, from this section, that the right to arbitrate only exists where the party, who has sustained the loss, is dissatisfied, which does not apply to the facts in this case, the party being perfectly satisfied with the original adjustment.

However, under the provisions of the last paragraph of Section 360, supra, the Board has authority to review all reports of appraisers, to conduct a hearing and to adjust all losses. This authority must necessarily vest in the Board, otherwise the Board would be bound by an appraisal even though it was apparent that it was erroneous or even where it was fraudulently made.

If the party, who has sustained the loss, is dissatisfied with the action of the Board, he, of course, can go into court and have the question of loss judicially determined, and, in this connection, the constitutionality of Section 360, providing for arbitration and making the findings of the appraisers binding, is questioned, as being an

attempt to delegate a judicial power in a manner not authorized by the Constitution, and to deprive courts of their right to hear and determine all judicial questions.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.