

Opinion No. 58.**Appropriations—Hail Insurance — Administration—insufficient Appropriation—Emergency.**

HELD: Since the Legislature fixed the amount of money to be expended for administration of the insurance fund in House Bill 337, Laws of 1937, the board of examiners may not provide for an additional appropriation in case of there being insufficient funds for administration purposes, under the provisions of Sections 193 or 355 R. C. M. 1935.

In case of insufficient appropriation the board of hail insurance may obtain permission to make expenditures beyond the appropriation as provided by Section 2, Chapter 40, Laws of 1937.

May 5, 1939.

Hon. E. K. Bowman
Chairman, State Board of
Hail Insurance
The Capitol

Dear Mr. Bowman:

You have presented facts showing that due to the accidental loss of an automobile, the current appropriation will be insufficient to cover the anticipated expenditures for the operation of the board of hail insurance the balance of the fiscal year, and request my opinion as to whether the board of examiners may provide additional revenue under Section 335, R. C. M., 1935, which provides:

“The state treasurer shall receive all monies paid to him under this act and shall place same to the credit of a fund to be known as the state hail insurance fund and may from time to time transfer to the hail insurance administrative fund such sums as the state board may deem necessary and proper to pay the expenses of administration together with such sums as may be needed

to pay all the warrants registered against the hail insurance administrative fund, plus the accrued interest thereon, and shall pay out of such funds on warrants drawn by the state auditor by order of the state board of hail insurance. * * *

Section 193 Id., also provides:

"* * * provided, however, that nothing in this act contained shall require an appropriation by the Legislature for the administering of any specific trust fund administered by any state board, commission or department."

The Twenty-fifth Legislative Assembly, Chapter 337, Laws of 1937, page 663, made the following appropriation:

"Board of Hail Insurance. From Hail Insurance Administrative Fund.

"For salaries fixed by law, three thousand dollars (\$3,000.00);

"For other salaries and expenses, eight thousand nine hundred fourteen dollars (\$8,914.00).

"From Hail Insurance Fund.

"So much thereof as may be necessary to pay all losses and lawful claims in compliance with Section 361, Revised Codes of Montana, 1935."

We need not here consider whether the hail insurance fund is a trust fund so as to come within Section 193, nor whether under Section 355, the appropriation, if any, lapsed at the end of two years (Section 12, Article XII, Montana Constitution) for the reason that the Legislature did, by said House Bill 337, assume to make an appropriation for the expenses of administration of the board of hail insurance. By doing so the Legislature fixed a limit upon such expenditures. This the Legislature had the power to do since the hail insurance act is of its own creation. The board of hail insurance therefore may not expend for administrative purposes beyond this limit. (Chapter 40, Laws of 1937.)

We think that the state, having undertaken the business of hail insurance, it became a function of state government and the expense of administration is one of the ordinary expenses of the

executive department of the state and that therefore the inclusion of such appropriation within House Bill 337 was proper and not in violation of Section 33, Article V of the Montana Constitution.

Miller Ins. Agency v. Porter et al., 93 Mont. 567, 570 et seq., 20 Pac. (2) 643;

Compare Volume 15, Opinions of Attorney General, 528.

We call attention, however, to Section 2, Chapter 40, Laws of 1937, under which some relief may be obtained.