No. 450

STATE BOARD OF HAIL INSURANCE, rules and regulations of—HAIL—INSURANCE

Held: 1. The State Board of Hail Insurance, under the law creating that department, has authority to make reasonable rules and regulations which it may determine to be practical, necessary, and beneficial for the conduct of the department.

2. The Board has authority to make and promulgate any reasonable rule or regulation limiting its liability, providing such a rule is uniform and not arbitrary.

July 23, 1942.

Mr. E. K. Bowman, Chairman
State Board of Hail Insurance
Capitol Building
Helena, Montana

Dear Mr. Bowman:

You have referred to this office the correspondence concerning adjustment of a hail loss in which there appears to be involved a question of law which you submit for our opinion.

It appears the loss occured by reason of hail on September 7, 1941. An appraisal was made, and the loss fixed at 30%, or $3.00 per acre, on 193 acres, or $579.00. The appraisement was reported to your board for approval as provided by the hail insurance law. It further appears the board, after due consideration, refused to approve the appraisement on the ground the insured neglected—under favorable conditions—to harvest the grain in question within a reasonable time after the same was ripe. The ground stated is based upon paragraph 21 (b) of the "Stipulation and Agreements," printed on the Application for Insurance made by the insured.

The legal question involved and which you submit for my opinion is as to the authority of the State Board of Hail Insurance to promulgate a rule which would relieve it of liability under the policy of insurance in the event the insured "neglects under favorable conditions to harvest the crops insured within a reasonable time after the grain is fully ripe."

From a reading of the Hail Insurance Act (Chapter 39, Political Code, Revised Codes of Montana, 1935), it is apparent the intent and purpose of the legislature were to create a state administrative agency through which the growers of grain could be provided protection against damage caused by hail to certain crops at the actual cost of the risk. It, in effect, provides a cooperative plan of insurance.

The act provides definite procedure to be followed by the administrative offices in carrying out the will of the legislature and the intent and purpose of the act. But, necessarily it does not—and from a political standpoint could not—cover all things incident to a complete, fair and just administration of such a subject as insurance. The legislature has, therefore, of necessity delegated to the Board such authority as is reasonably necessary to accomplish this object. This is expressed in Section 350, Revised Codes of Montana, 1935, wherein it is provided the Board:

"is hereby authorized, directed and empowered to make such rules and regulations as it may from time to time find practical, necessary and beneficial for the conduct of the department of hail insurance, subject to the provisions of this act."

That the legislature may authorize an administrative agency to promulgate rules and regulations to carry out the policy expressed in a statute without such being a delegation of legislative power as prohibited by the Constitution has been recognized by our Supreme Court. In the case of C. M. & St. P. Ry. Co. v. Board of Railroad Commissioners, 76 Mont. 305, 247 Pac. 162, which involved the validity of a rule promulgated by the state board of railroad commissioners, the court said at page 313 of the Montana report:

"The difficulty of defining the line which separates legislative power to make laws from administrative authority to make regulations has frequently been the subject of controversy. (United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 Sup. Ct. Rep. 480 (see, also, Rose's U. S. Notes); Cook v. Burnquist, 242 Fed. 321.) Decisions touching the question more or less thoroughly are many, and are far from harmonious. (State ex rel. Chicago, M. & St. P. Ry. Co. v. Public Service Commission, 94 Wash. 274, 162 Pac. 523.) The general rule of course is that neither Congress, nor the legislature (unless the Constitution of the particular state so authorizes, and Montana's does not), may delegate legislative power. Congress, it has been said, and the rule is applicable here, 'may not delegate the choosing of policies nor the duty of formally enacting the policy of the law, but it may formulate the policy as broadly and with as much or as little detail as it sees proper and it may delegate the duty of working out the details and the application of the policy to the situation it was intended to meet. (John B. Cheadle, The Delegation of Legislative Functions, 27 Yale Law Journal 892.)"

And again at page 314 the court said:

"Necessarily, the extent of the course of procedure and of the rules of decision are for the determination of the legislature. We think the correct rule as deduced from the better authorities is that if an Act but authorizes the administrative officer or board to carry out the definitely expressed will of the legislature, although procedural directions and things to be done are specified only in general terms, it is not vulnerable to the criticism that it carries a delegation of legislative power.

"But the power must not be so arbitrary in character as to transgress the 'due process clause' of the state or national constitution. . . ."

See also Public Service Commission v. City of Helena, 159 Pac. 24, 52 Mont. 527; State v. Public Service Commission, (Wash.) 162 Pac. 523.

Since the board has the power to promulgate rules and regulations, the only questions to be determined are whether such rule or regulation is reasonable and whether the specific facts claimed violative of the rule in question are such as to warrant the administrative board to apply the rule fairly and justly and not in an arbitrary manner.

From the facts presented in each specific case, it is for the board to determine, within a sound legal discretion and not arbitrarily, whether the rule has been violated so as to relieve the board of liability under the policy of insurance.

It is worthy of note the Board, directed by the act "to prepare blank forms for all purposes necessary, and proper and incidental to the effective operation and enforcement of the Act," has prepared a form of application. This form is in effect the policy of insurance, and contains the entire contract between the board, as the insurer, and the insured. The act re-

quires the insured to file such application, "properly filled out," with the assessor, not later than August 15th. The application is signed by the insured, and over the signature appears the following:

> "In consideration of the benefits to be obtained from State hail insurance the applicant agrees to pay for said State hail insurance the amount charged to him when the annual levy is made and **also agrees that this application is made subject to the stipulations and agreements set forth above and on the back hereof.**" (Emphasis mine.)

On the back of the application appears the following stipulation, among others:

> "21. The liability of the State Board of Hail Insurance for Damage by hail to crops insured under this Act shall cease when: . . .
> "(b) The insured neglects under favorable conditions to harvest the crops insured within a reasonable time after the grain is fully ripe."

It would seem reasonable that, under the authority given the Board "to make such rules and regulations as it shall from time to time find practical, necessary and beneficial. . . ," such rule or regulation incorporated in a stipulation forming part of the contract of insurance, as here in question, would be valid and binding.

The policy of this law, as pointed out above, is to provide protection at the actual cost of the risk. Any rule or regulation which tends to conform to this policy by limiting liability within reasonable bounds, as would such a rule as here considered, in my opinion would be a valid exercise of the authority granted the board. The rule is a part of the contract into which the insured entered, and he agreed to adhere thereto as part of the consideration.

Whether the facts in the instant case are sufficient to warrant the board in disapproving the claims is not within the province of this office to say, and no opinion therin is here expressed.

It is therefore my opinion:

1. The State Board of Hail Insurance, under the law creating that department, has authority to make reasonable rules and regulations which it may determine to be practical, necesary and beneficial for the conduct of the department.
2. The Board has authority to make and promulgate any reasonable rule or regulation limiting its liability, providing such a rule is uniform and not arbitrary.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General