

Hail Insurance Fund, Warrants Registration of—Warrants of Hail Insurance Fund, Payment of.

Warrants may be drawn against the Hail Insurance Fund and registered for payment when there are no funds therein for their payment.

Sept. 25, 1920.

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

Dear Sir:

I am in receipt of your letter inclosing letter from the State Auditor with reference to the issuing of warrants in payment of claims against the State Hail Insurance Administration Fund.

As I understand the situation the State Board of Hail Insurance has approved certain claims which have been incurred in the administration of the State Hail Insurance Law, and there being no funds in the State Hail Insurance Fund your board desires the State Auditor to issue warrants in payment of such claims, such warrants to be registered and called in for payment when the taxes levied under the hail insurance law are collected and deposited in the state treasury. To this the State Auditor demurs for the reason that the general laws of the state forbid the issuance of any warrants against any fund, appropriation or account of the state when there are no moneys in such funds for the payment of the warrants.

In the letter to the State Auditor reference is made to the Hail Insurance Administration Fund. The Hail Insurance Act makes no provision for any such fund. There is but one fund created by this act and that is the "State Hail Insurance Fund." Under Section 4 of such act all moneys received by the State Treasurer under said act are deposited in this one fund, and all warrants issued under the act, whether for losses incurred or expenses of administration, are paid out of this one fund.

Section 4 of the act, while not in direct terms authorizing the issuance of warrants against such fund when there is no money in the fund with which to pay such warrants, does imply that warrants may be drawn against the fund even tho there is no money in the fund with which to pay them, as it provides that if such warrants are presented for payment and there is no money in the fund with which to pay them, they shall be registered and bear interest at the rate of 4% per annum. If it was not intended that warrants could be drawn against the fund unless there is money in the fund to pay such warrants then there would have been no reason for inserting the provision for the registration of warrants when there is no money in the fund with which to pay them, and the fact that such a provision was placed in this section shows clearly that it was the intention that warrants might be drawn against the fund in payment of claims, whether for losses or administration expenses, even tho there is no money in the fund with which to pay such warrants.

The general law forbidding the drawing of warrants against a fund unless there is money in the fund for the payment thereof has no application here, for the reason that the State Hail Insurance Law is a special law covering this whole subject, and as it provides for the drawing of warrants against the fund, and the registration of such warrants when there is no money in the fund for the payment thereof, it withdraws this whole subject from the operation of the general law, it being a rule of statutory construction that when there is a conflict between the provisions of a general law and those of a special law, the provisions of the general law must give way to those of the special law.

You are, therefore, advised that I am of the opinion that it is the duty to draw warrants against the Hail Insurance Fund in payment of these claims, even though there is no money in the fund with which to pay the same, and that when such warrants are drawn they may be presented to the State Treasurer and registered and called in for payment when there is money in the fund available to that purpose.

Respectfully,

S. C. FORD,

Attorney General.