

**Compromise — Hail Insurance — Liens — Mortgages—
Taxes.**

The Board of Hail Insurance has power to compromise with mortgagees holding mortgages prior to the lien of the hail insurance levy and to accept less than the full amount in settlement of the hail insurance charge.

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

My dear Mr. Bowman:

You have submitted to this office for an opinion the question whether the Hail Insurance Department has authority to authorize the acceptance of a compromise offer made by mortgagees holding mortgages prior in time to the lien of hail insurance taxes, to pay part of such taxes on condition of the cancellation of the total original charge for hail insurance.

Section 351, R. C. M. 1921, provides for the levy of what it denominates a "tax" on all lands, the owners of which have elected to become subject to the Hail Insurance Law. The Act further provides that such "tax levies" shall be extended on the tax roll and shall be a lien on the lands against which they are levied, the same as other taxes. While it is true that these special levies are called taxes, they are not taxes in the proper sense of the word.

In *State vs. Gowdy*, 62 Mont. 119, the Supreme Court of this state quotes with approval the following definitions of taxes:

"Taxes are defined to be burdens or charges imposed by the legislative power upon persons or property, to raise money for public purposes."

"A tax is an enforced contribution of money or other property, assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expense."

Tested by the above rules it is obvious that these special hail insurance levies are not taxes. They are not imposed for the purpose of defraying the public expense, nor do they become a lien upon property except as a result of the voluntary act of the owner of the property who must first consent to having his land made subject to the provisions of the Hail Insurance Act.

The general rule is that no officer or state department has any right or authority to waive the payment of a tax as the term "tax" is properly used. (See *Opinions of Attorney General*, Volume 6, page 50.) Since, however, hail insurance levies are not taxes it is my opinion that the general rule above stated does not apply to them and that your department may in the exercise of sound discretion consent to the compromise of these so-called tax levies, particularly in cases where it would otherwise be impossible for the state to realize anything whatever as a result of the tax lien resulting from these levies.

This office has heretofore rendered an opinion holding that the lien of these hail insurance levies is subsequent to that of a prior recorded real estate mortgage on the land covered by the hail insurance levy. The Legislature expressly adopted the above rule by the amendment to Section 351, enacted by Chapter 40 of the Laws of 1923. However, prior to the adoption of the above amendment, a mortgagee still had the right to ignore the lien of these hail insurance levies provided that his mortgage was prior in time to the making of the levy.

Since, therefore, hail insurance levies are not taxes and since the state is powerless to enforce the lien thereof against the lien of the holder of a prior recorded real estate mortgage, it is my opinion that your office possesses the authority referred to in your inquiry.

Very truly yours,

L. A. FOOT,
Attorney General.