

Opinion No. 61.

**State Insurance—State Board of
Examiners, Power of.**

The State Board of Examiners has the right to cancel the reinsurance policy made under the provisions of Chapter 179, Laws of 1935, and has the authority to enter into a new contract for state insurance without calling for bids under proper advertisements.

March 17, 1937.

Honorable Roy E. Ayers
Governor
The Capitol

My dear Governor Ayers:

You have submitted the following:

"An agreement between the Pearl Assurance Company and the State of Montana desired to untangle all of the questions which have arisen by reason of existing contracts which were executed under the late State Insurance Law, which was repealed by a referendum at the last general election, and to make effective insurance policies on State property as was anticipated by the original contracts, has been submitted to the State Board of Examiners for execution.

"I am submitting herewith copy of such agreement submitted as aforesaid, and as a member of the State Board of Examiners I respectfully request an opinion from your office as to what this contract really does. I appreciate this will require not only a consideration of this proposed contract, but also a consideration of existing contracts between the State and the Pearl Assurance Company.

"In addition to advice as to the position the State will be in if this new contract is executed, I also respectfully request your advice as to the legality of this proposed contract."

There are two questions: (1) What does this contract really do? (2) Is the proposed contract legal?

My understanding and opinion of what the contract really does, is as follows:

1. It cancels the reinsurance policy No. 4263441, made with the Pearl As-

insurance Company, Ltd., under the provisions of Chapter 179, Laws of 1935, and possibly by implication recognizes that such contract was terminated by the referendum vote of the people themselves at the last election.

2. It substitutes therefor a new policy, with the same company, dated December 2, 1936, for a period of three years, thereby extending the date of the underlying policy, dated May 1, 1936 to December 2, 1936.

3. The new policy will bear the same number as the underlying policy with the same company, the purpose of which was to protect the state against loss in the event that said Chapter 179 should be declared unconstitutional, or be repealed by a referendum vote of the people, and carries the same rate as the underlying policy, to-wit: 79c per one hundred dollars, whereas the reinsurance policy carried the rate of \$1.69 per one hundred dollars, of which 80% was paid to the said company.

4. It composes and adjusts all legal questions and entanglements between the state and the company, arising out of the said referendum vote, and the effect thereof upon the reinsurance contract, including the adjustment of all losses occurring after December 2, 1936, the date when said referendum vote became effective.

5. By the agreement, the company admits that the state has paid on the reinsurance policy \$110,529.82, of which \$33,479.84 is unearned premium, to be applied on the new policy premium of \$77,763.64, leaving a balance to be paid of \$44,283.80, as follows: \$20,000 in July, 1937, and \$24,283.80 in July, 1938.

6. The reinsurance policy provides that in the event it is cancelled for any reason, the state shall pay for the coverage upon the short term rate. By the new agreement, the company accepts December 2, 1936, instead of March 15, 1937, as the end of the short term and the rate is figured on that basis. In other words, the state will pay at the rate of 79c per one hundred dollars, instead of the higher short term rate, as provided in the reinsurance policy for the period from December 2, 1936 to March 15, 1937.

Whether the proposed contract is legal, depends upon (a) the right of the state to cancel the reinsurance policy, and (b) the right of the state to make a new contract with the Pearl Assurance Company, Ltd., without calling for bids. The reinsurance policy expressly permits cancellation, the penalty being payment at the short term rate. Whether the reinsurance contract was not cancelled by virtue of the referendum vote of the people, is a question upon which different opinions have been expressed. That question would not be settled until it was finally submitted to the Supreme Court. In the meantime, more or less confusion has, and will, result. In view of all the legal entanglements arising, and the possible loss to the state, it is my opinion that it is the right and within the discretion of the board of examiners to cancel the reinsurance policy, if it still exists (a fact of which there might be a doubt, to say the least), and to make a new contract. If the reinsurance contract was terminated by the referendum vote, it, of course, became the duty of the board of examiners to make a new contract of insurance in order to protect the state property against loss. Such action on the part of the board would seem to be in accordance with the mandate of the people in the referendum vote.

As to whether the board has authority to make a new contract without calling for bids, this question was settled by our Supreme Court in *Miller Insurance Agency v. Porter*, 93 Mont. 567, 20 Pac. (2) 643, which held that fire insurance on state buildings is not included within the term "supplies" for the furnishing of which the state board of examiners, under Sections 256 and 257 R. C. M. 1935, must call for bids under proper advertisements. It is therefore my opinion that the said proposed contract is legal.