

Opinion No. 95.**Hail Insurance — Premiums — County
Treasurer—Compromise.**

HELD: 1. The State Hail Insurance Board, within its sound discretion, may compromise hail insurance premiums, by accepting partial payments thereon and debiting the deferred payment, unless tax certificates have been assigned and tax deeds issued, when it is otherwise impossible to collect the full amount of premium.

2. The County Treasurer must accept hail insurance warrants to apply on the premium when the warrant is less than the amount of the premium charge.

3. Accounts shall be audited in the manner prescribed by the state examiner.

July 10, 1939.

Board of Hail Insurance
State Capitol Building
Helena, Montana

Gentlemen:

Attention of Mr. E. K. Bowman,
Chairman.

You have submitted to this office for my opinion the following questions:

“Must a county treasurer accept a payment on a hail insurance premium when in fact the amount offered in payment is not sufficient to pay the entire premium due the State Hail Insurance Fund. If so, would the proper procedure be for the county treasurer to credit the amount paid and carry the balance due as an unpaid lien.

"Also, must a county treasurer accept a hail insurance warrant (representing an amount due a grain grower on an approved loss) when sent him by the State Board of Hail Insurance to apply on the premium of the grain grower when in fact the warrant is less than the amount of the premium charge. If this is answered in the affirmative must the county treasurer receipt the grain grower for the amount paid and carry the balance due on the assessment roll as a delinquent amount due the State Hail Insurance Fund."

If taxes assessed and levied against land to pay hail insurance premiums constitute either a general tax or a special improvement tax a compromise payment of the tax by accepting part payment and debiting the balance as an unpaid lien, or by acceptance by the county treasurer of a hail insurance warrant less than the total amount due and of debiting the balance, would be prohibited as in violation of Section 39, Article V of the Constitution. (*Yellowstone Packing, etc., Co. v. Hays*, 83 Mont. 1.) The mere fact that the statute, in general language, refers to hail insurance premium charges as a tax (Chapter 39, Vol. 1, R. C. M., 1935) does not mean that it is such a tax as contemplated within the meaning of the Constitution. The hail insurance premium tax is not "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," and by reason thereof is not a tax within the purview of the constitution. (*State v. Gowdy*, 62 Mont. 119; *Attorney General's Opinions*, Vol. 10, p. 391; *Davis v. McLean County*, 52 N. D. 857; *State v. Johnson*, 54 N. D. 184; *Fed. Farm Mortgage v. Falk*, 67 N. D. 154.) The effect of the Hail Insurance Act (Chapter 39, *supra*) is to classify the levies and taxes paid thereunder as hail insurance premiums created by contract between the insured and insurer. Such obligations are not created under the general taxing powers of the government. The insurance is optional (Sections 350, 362, R. C. M., 1935.)

Tax levies providing for hail insurance premiums constitute a lien upon the land the same as other property taxes. (Section 351, R. C. M., 1935.) Tax certificates and tax deeds are assignable and issuable by virtue of the non-payment of the taxes for hail insurance premiums. Where a tax certificate has been assigned by the county or tax deed issued, the right to compromise by accepting deferred payments and debiting the unpaid balance is excluded. A tax levy to pay hail insurance premiums not being a tax within the meaning of the Constitution, it follows that the hail insurance board in its sound discretion, subject to the above exception, may authorize a compromise of the same by accepting part payments and debiting the balance when it is otherwise impossible to collect the full amount at the same time. Likewise, the county treasurer must accept a hail insurance warrant from the State Board of Hail Insurance to apply on the premium when the warrant is less than the amount of the premium charges. The county treasurer shall audit such account in the manner prescribed by the state examiner.