

No. 449

ADJUTANT GENERAL—PREPAREDNESS AND ADVISORY COMMISSION—CIVILIAN DEFENSE—CITIZENS' DEFENSE CORPS—WAR—DEFENSE

Held: If the Adjutant General judges an expenditure from available funds for certificates and cards to be presented to qualified members of the Citizens' Defense Corps necessary in rendering aid and assistance to the State Preparedness and Advisory Commission, and if, in his judgment, such cards and certificates are needed and required by the Commission, the Adjutant General would be authorized under Section 8 of Chapter 142, Laws of 1941, to make such an expenditure.

June 22, 1942.

Honorable Sam C. Ford
Governor of State of Montana
Capitol Building
Helena, Montana

My Dear Governor:

You have called my attention to a letter received by you from William G. Ferguson, Executive Director for Civilian Defense. In his letter Mr. Ferguson suggests the state should give some recognition to the men and women of Montana who give their time and ability to learn what is required before they can be certified as members of the Citizens' Defense Corps. He suggests these citizens be presented with a certificate showing their qualifications and the unit in which they are enrolled; also an identification card which could be carried by them. It is proposed the expense

of such certificates and cards be paid from the funds appropriated to the Department of the Adjutant General. You have asked my opinion if the use of such funds for this purpose would be legal.

The Twenty-seventh Legislative Assembly of Montana, by Chapter 142, created the Montana Preparedness and Advisory Commission. Section 4 of the act sets forth the objects and purposes of the Commission as follows:

"The objects and purposes of the commission created by this act are to work with the national defense advisory commission to collect and correlate information relative to the resources of Montana that might be valuable or used in any national preparedness program and to furnish the national defense advisory commission with all information that it may desire or require along these lines, and to represent the State of Montana in requesting the government of the United States and its various departments and branches, including the national defense advisory commission, to use the natural resources of the State of Montana and the facilities which Montana has to offer in the way of sites for cantonment, airplane bases, lands for industrial plants for the preparation of war materials and all other purposes in the way of tendering assistance to the government of the United States, and asking the government of the United States to assist for preparedness purposes in the development of the resources of and facilities in the State of Montana, and for these purposes the commission shall have power to subpoena witnesses, direct the state educational institutions and various boards and bureaus of this State to furnish information and do such things and take such action as may be necessary within the purposes contemplated by this act, and for this purpose may issue subpoenas, call, swear and examine witnesses."

Section 8 of the act provides:

"Be it further enacted that all officers, department, boards, commissions, institutions and agencies of the State Government or any county or municipality in the State shall cooperate with the commission and shall render it such aid and assistance and give it such information as the commission may need or require."

It is very clear the legislature has enjoined upon every officer, department, board, commission and agency of the state, county and municipality the duty of cooperating with the commission and to "render it such aid, and assistance and give it such information as it may need or require." In opinion Number 432 of Volume 19, Report and Official Opinions of the Attorney General, in holding a Board of County Commissioners may use county funds for the purpose of aiding and assisting the County Defense Commission, this office said:

"A board of county commissioners, in rendering aid and assistance to and in cooperating with the Montana Preparedness and Advisory Commission, under the provisions of Chapter 142, Laws of 1941, may, within its discretion and to the extent of available funds, appropriate county funds for use by the county Preparedness and Advisory Commission set up under the act, if necessary in rendering aid and assistance to the State Commission, provided any such appropriation will not jeopardize the regular necessary business of the county."

Inasmuch as all military and semi-military activities of Civilian Defense are under the direct control and supervision of the Adjutant General, it would be appropriate the matter suggested by Mr. Ferguson be handled through the Adjutant General's Department.

It is therefore my opinion that—if the Adjutant General judges an expenditure from available funds for certificates and cards to be presented to qualified members of the Citizens' Defense Corps necessary in rendering aid and assistance to the State Preparedness and Advisory Com-

mission and if, in his judgment, such cards and certificates are needed and required by the Commission—the Adjutant General would be authorized under Section 8 of Chapter 142, Laws of 1941, to make such an expenditure.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General

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 occurred 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 appraisal 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 appraisal 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: