

No. 460

**ARMORY BOARD—EXAMINERS, State Board of—
INSURANCE**

Held: The State Board of Examiners does not have the authority to enter into contracts for insurance, concerning such armory buildings as are under the exclusive jurisdiction and ownership of the Montana Armory Board, but said Montana Armory Board as such corporation has the authority to insure such buildings.

July 31, 1942.

Mr. W. L. Fitzsimmons
Clerk of State Board of Examiners
State Capitol
Helena, Montana

Dear Mr. Fitzsimmons:

You have submitted for my opinion the question:

“Does the State Board of Examiners have the power and authority to procure, and enter into contracts of insurance on State Armory Buildings, for and in behalf of the Montana Armory Board?”

In answering your inquiry it is well to note the legislature created the “Montana Armory Board” by Chapter 161, Laws of 1939. Section 2 of said act declares:

“This board is hereby made a body politic and corporate, and shall have the name of ‘Montana Armory Board.’ ”

Section 4 of Chapter 161, Laws of 1939, as amended by Chapter 123, Laws of 1941, provides in part:

“The Montana armory board shall possess all the powers as a body corporate necessary and convenient to accomplish the objects and purposes prescribed by this act, including the following, which, however, shall not be construed as a limitation upon the general powers hereby conferred:

“(a) To enter into contracts and be contracted with in any matter connected with any corporate purpose, herein defined.

“(b) To borrow money and issue bonds, and to pledge any and all property and income of such board acquired or received as herein provided, to secure the payment of such bonds, and to redeem such bonds. . . .

“(c) To sue and be sued.

“(d) To acquire, hold and convey real or personal property, by gift or purchase for armory purposes.

“(e) To donate such property to the State of Montana if and when all debts which have been secured by such property or by the income thereof, have been paid.

“(f) To purchase sites and buildings or to purchase sites and construct buildings for armory purposes, provided that the board of county commissioners of the county wherein said site or building is to be purchased or a building constructed, shall give their written approval of said purchase or construction.

“(g) To execute leases of buildings and sites to the State of Montana for armory purposes. . . .

“(h) To employ agents and employees necessary to carry out the objects and purposes of the board as herein expressed.

“(i) To have and use a common seal and to alter the same at pleasure.

“(j) To adopt all needful by-laws, rules and regulations for the conduct of the business and affairs of such board and for the management and use of such sites and buildings acquired for armory purposes, consistent with the objects and purposes of such board.

“(k) To have and exercise all powers and be subject to all duties usually incident to boards of directors of corporations.”

It is apparent the legislature, in creating this corporation, granted it all the powers of a body corporate which are necessary and convenient to accomplish the objects and purposes under the act, prescribed certain powers, and then stated in substance that such stated powers shall not be construed as a limitation upon the general powers thereby conferred.

I find no specific grant of power in the act authorizing the board to insure the armory buildings.

However, the fee of the buildings is in the Montana Armory Board as the corporate entity. The Montana Armory Board is the board of directors. As such board of directors, it is specifically authorized to issue bonds and to make such agreements and covenants in reference to such

bonds, and the security therefor, as may be found necessary or desirable to make such bonds binding and marketable obligations of the board as a body politic and corporate.

In order to make the bonds salable, it surely would be necessary to insure the armory buildings, as the buildings would represent a greater part of the security. The income from the buildings is required to be pledged to secure the payment of such bonds. The cost of insurance as a required safeguard of the bond holder, as well as the board, would be a proper charge against such income.

Surely under the expressed powers conferred on the board, the powers implied, the board has the power and authority, and no doubt it is its duty, to insure such property as would be insured by a like board of directors of a corporation in ordinary business.

Does the State of Montana have an insurable interest in the armory buildings, the fee of which is in the corporation known as the Montana Armory Board? If not, then the State Board of Examiners would have no authority to contract for such insurance coverage.

Section 8070, Revised Codes of Montana, 1935, provides:

"Any interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest."

Section 8071, Revised Codes of Montana, 1935, provides:

"An insurable interest in property may consist in:

1. An existing interest;
2. An inchoate interest founded on an existing interest; or,
3. An expectancy, coupled with an existing interest in that out of which the expectancy arises."

The State of Montana has no existing interest at the present time in said armory buildings, although it does have an expectant interest, for the act provides:

"When all bonded and other debts of the board insured by the sites and buildings acquired by it under this act or by the income therefrom shall have been paid, all such sites and buildings shall be donated and conveyed to the State of Montana."

However, under Subdivision 3 of Section 8071, *supra*, there must be not only an expectancy, but also there must be coupled with such expectancy an existing interest in that out of which the expectancy arises.

Section 8073, Revised Codes of Montana, 1935, further provides:

"A mere contingent or expectant interest in anything, not founded on the actual right to the thing, nor upon any valid contract for it, is not insurable."

And Section 8075, Revised Codes of Montana, 1935, declares:

"The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void."

Also, Section 8076, Revised Codes of Montana, 1935, provides:

"An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime."

The Supreme Court of Montana, in discussing the last two above sections, held:

"We enter upon a consideration of the question having in mind the elementary principles that the sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract

is void' (Sec. 8075, Rev. Codes 1921); 'an interest insured must exist when the insurance takes effect, and when the loss occurs' (Id., Sec. 8076)."

Libby Lumber Co. v. Pacific States Fire Ins. Co., 79 Mont. 166, 174, 255 Pac. 340.

It therefore appears to me the State of Montana does not have an insurable interest in the armory buildings until the same are conveyed to the state.

A somewhat similar question arose in the case of Wheeler v. Mitchell et al., in which the Court said:

"Here the authority of the examiners is questioned where they have attempted to insure property and expend funds, the control of which has been expressly placed by the legislature in the State Highway Commission. Nowhere in the Constitution or statutes do we find authority for the State Board of Examiners to make contracts relating to maintenance or construction of highways or expenditure of highway funds in derogation of the power specifically vested in the Highway Commission by the legislature, though under the Constitution and statute any claim arising from such contract must be examined by them. . . . We, therefore, conclude that the State Board of Examiners had no authority to enter into the contract for insurance with the intervener insurance company, and that the action of the trial court in making permanent the temporary injunction must be and is affirmed."

Wheeler et al. v. Mitchell et al., 110 Mont. 385, 388, 389, 101 Pac. (2nd) 1071.

I am therefore of the opinion the State Board of Examiners does not have the authority to enter into contracts for insurance, concerning such armory buildings as are under the exclusive jurisdiction and ownership of the Montana Armory Board, but said Montana Armory Board as such corporation has the authority to insure such buildings.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General