

June 20, 1946.

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

Dear Mr. Bowman:

You have requested my opinion as to how your school board can arrange for legal assistance in collecting delinquent hail insurance premiums. You advise me the premiums are delinquent at this time in several counties and unless legal action is taken, a considerable sum will be lost to the hail insurance fund.

Chapter 39 of the Political Code of Montana, Sections 350 to 363.1, Revised Codes of Montana, 1935, the hail insurance law, amply provides for the collection of hail insurance premiums. In view of the provisions of these statutes, it would appear the legislature did not contemplate any need for legal proceedings other than as provided therein.

Section 356 deals with the duties of the county assessor, and specifically provides:

“ . . . and each such taxpayer who so elects to become subject to this act shall be liable for the taxes levied for hail insurance . . . ”

Section 351, Revised Codes of Montana, 1935, authorizes the levy of a tax on all lands growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the act and creates a lien on such land. It further provides:

“ . . . In addition to the lien created above on the land of the insured, the levy for such hail insurance shall also constitute a lien on the crops insured. . . . ”

“The crop lien above mentioned shall be included in all applications for hail insurance and shall be enforced, as provided in Section 354 and 354.1, against all insured, except those owning unencumbered land or those who have paid cash for hail insurance . . . ” (Emphasis mine.)

Section 354, Revised Codes of Montana, 1935, provides:

Opinion No. 170.

Hail Insurance—Collection, Hail Insurance Premiums.

Held: The legislature has specifically placed the duty of collecting hail insurance premiums on the county treasurer and the sheriff (and not on the Board of Hail Insurance) and in the absence of any statutory authority, the Board of Hail Insurance may not employ legal assistance in collecting delinquent hail insurance premiums.

"The county treasurer in each county in the state shall collect all levies made under this act in the same manner as other property taxes are collected and shall keep all monies collected by him for hail insurance in a separate fund, to be known as the hail insurance fund and remit same to the state treasurer in the same manner as provided by law for the remittance of other monies due to the state. All county treasurers shall use due diligence in making the collections of the levies provided herein. . . ." (Emphasis mine.)

Section 354.1, Revised Codes of Montana, 1935, provides:

"If the person receiving hail insurance secured by a crop lien fails to pay said insurance to the county treasurer by January first of the year following the year in which the crop so insured is grown the county treasurer shall after the first day of January deliver to the sheriff of said county a full, true and correct copy of the lien on file in the office of the clerk and recorder and such sheriff must immediately demand from the person or persons signing such lien, payment of the amount due thereon, and if the same is not paid to the sheriff upon such demand being made, the sheriff must forthwith seize and sell in the manner provided by law for the sale of personal property under execution, a sufficient amount of grain belonging to such person to pay the amount due for hail insurance together with interest and costs and expenses of seizure and sale." (Emphasis mine.)

The legislature has specifically placed the burden upon the county treasurer to "use due diligence in making the collections of the levies," which are to be collected as other taxes. A failure on the part of the treasurer to make collections, or at least to use due diligence, is a violation of his duty as such officer. Likewise, a failure on the part of the sheriff to execute on and sell sufficient of the crop to pay the premium on which the lien attaches is a violation of the duty of the sheriff.

The statute clearly provides if the premium is not paid by the first day of January, the county treasurer shall

deliver to the sheriff a full, true and correct copy of the lien and such sheriff must immediately demand payment, and if payment is not made, the sheriff must forthwith seize and sell a sufficient amount of grain belonging to such person to pay the amount of the premium due, together with interest, cost and expenses of seizure and sale.

The provisions of these statutes are mandatory. The procedure provided by the legislature is so clear and simple, it would be difficult for a county treasurer or sheriff to explain lack of due diligence in performing this mandatory duty placed upon him.

It is evident from the language used by the legislature it was the intention the public officers charged with these duties should act expeditiously and without delay immediately after the premiums become delinquent. The duty of collecting premiums is placed on these officials and not on the board.

Section 466, Revised Codes of Montana, 1935, requires the sheriff and treasurer of each county to file an official bond. Section 475, Revised Codes of Montana, 1935, among other things, provides:

"The condition of every official bond must be that the principal shall well, truly and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed upon him by any law of the state subsequently enacted. . . ."

The duties required of the treasurer and sheriff in the collection of hail insurance premiums are official duties which his official bond guarantees he shall well, truly and faithfully perform. Neglect by either of them to perform such duties would constitute a breach of the conditions of said bond for which he and his sureties would be liable.

It may be argued that because of the provision in Section 354 "the state board may furnish assistance needed at any time in making collections or may take over the collection of any levy at any time," the board would have authority to employ legal assistance in the collection of delinquent premiums. I believe, however, in view of the clear language pointed out herein above, the provisions of Section 354 quoted simply mean the board may furnish assistance in the actual collec-

tion through its regular field men, adjusters, etc., by personal contact with the insured. Because of the specific language of the statutes placing the duty on the sheriff to seize and sell sufficient of the grain to pay the premium due, I do not believe the legislature, by the language of Section 354 quoted above, meant to delegate such authority to the board.

It is therefore my opinion the legislature has specifically placed the duty of collecting hail insurance premiums on the county treasurer and the sheriff (and not on the Board of Hail Insurance), and in the absence of any statutory authority, the board of hail insurance may not employ legal assistance in collecting delinquent hail insurance premiums. It may be this law would be changed, but that is the province of the legislature.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General