

Opinion No. 32**Hail Insurance—Premiums—Taxes—Cancellation of Obligations.**

Held: (1) Chapter 44, Montana Session Laws, 1949, does not apply Section 9029, Revised Codes of Montana, 1935, to delinquent hail insurance accounts.

(2) Hail insurance premiums are not taxes, but are obligations owed to or held by the counties.

July 6th, 1949.

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

Dear Mr. Bowman:

You have requested my opinion as to the application of House Bill No. 74, which will be Chapter 44, Montana Session Laws of 1949, to delinquent hail insurance accounts on the books of the State Board of Hail Insurance.

Chapter 44, Section 1, provides that the County Treasurer of each County, on or before the thirty-first day of December, 1949, and thereafter, on or before the first Monday in June of each year, should prepare a list of personal property taxes which are not a lien on real estate and which have been delinquent for ten years or more.

It further provides that ,at the same time, the County Treasurer should prepare a list of all contractual obligations owed to, or held by, the County for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations, to-wit, Section 9029, of the Revised Codes of Montana, 1935.

This act was passed pursuant to the approval by the people of the State of Montana of the Constitutional amendment submitted to them by Chapter 197, Montana Session Laws of 1947.

The people of the State approved that amendment in November, 1948, and that result was declared by Governor Ford by public proclamation dated December 3, 1948.

Chapter 44, Montana Session Laws of 1949, is in almost identical language with that of the amendment adopted.

The hail insurance law classifies the premiums in various ways, using the terms, rates, and assessment, levies, and tax levies.

However, the hail insurance levies are not taxes.

In Volume 10, Opinions of the Attorney General, 391, Attorney General L. A. Foot cited the definition of taxes set forth by the Montana Supreme Court in *State v. Gowdy*, 62 Montana, 119, 203 Pac. 1115, and held therein that the special hail insurance levies were not taxes and hence could be compromised and cancelled.

In Volume 18, Opinions of the Attorney General, 107, Opinion No. 95, Attorney General Freebourn ruled that hail insurance premiums are not taxes, stating further:

"The effect of the hail insurance act (Chap. 39, Vol. 1, R. C. M., 1935) is to classify the levies and taxes paid thereunder as hail insurance premiums created by contract between the insured and the insurer. Such obligations are not created under the general taxing powers of the Government. The insurance is optional."

Not being a tax, the hail insurance premiums have been held to be subject to compromise. (10 Attorney General's Opinion, 391; 18 Attorney General's Opinions 107, Opinion Number 95.)

Therefore, that portion of House Bill 77, Chapter 44, Montana Session Laws, 1949, which has reference to the cancellation of delinquent taxes, can have no application to those premiums.

The question, then, is whether or not the hail insurance premiums are one of those "certain obligations" the cancellation of which is ordained by the Legislature.

The wording of that portion of the act is:

"Every County Treasurer shall, within the same time, prepare in triplicate and submit to the Board of County Commissioners of his County, a list of all contractual obligations owed to or held by

his County for seed grain, feed or other relief, the collection of which is barred by the statute of limitations, to-wit, Section 9029, of the Revised Codes of Montana, 1935."

Certain it is, that the obligations of the hail insurance premiums are contractual (18 Opinions of the Att'y. Gen. 107, *supra*).

The two other necessary pre-requisites to a cancellation, then, are: (1) that the obligation be for "seed grain, feed, or other relief;" (2) that the collection be barred by Section 9029 of the Revised Codes of Montana, 1935.

It would be necessary to read into the terms "seed grain, feed, or other relief" past hail insurance premiums, in order to bring those obligations within the purview of this statute.

The specific act which provided seed grain relief was Chapter 19, Ex. L. 1918, and appeared as Chapter 20, Revised Codes of Montana, 1921, entitled *Indebtedness for Seed Grain—Drought Relief*, being Sections 4640 through 4679, Revised Codes of Montana, 1921. These Sections were repealed by Chapter 29, Laws of 1935. Chapter 121, Laws of 1935, appears as Sections 4679.1, 4679.2, 4679.3, Revised Codes of Montana, 1935, and refers to the obligations incurred under the *Seed Grain—Drought Relief Act*. Sections 4679.1 and 4679.2 provide for release of seed grain liens from real and personal property and the procedure to be followed in executing such release. Section 4679.3, in explanation of the purpose of the act, states that:

"Nothing in the act is to be construed as a release, diminution remittance or postponement of the amount due the County under seed grain contracts, it being the intent of this act merely to (remove the technical cloud on property arising from the seed liens)." (Parenthesis supplied).

Chapter 21, Revised Codes of Montana, 1921 is entitled "*Indebtedness for General Drought Relief*", and consists of Sections 4680 through 4711.

This Chapter was originally passed as Chapter 8, Ex L. 1919. Section 4680, Revised Codes of Montana, 1921 states:

"To enable the several counties of the State of Montana, to provide relief for their inhabitants, who by reason of misfortune are entitled to the aid of society, the Boards of County Commissioners of all counties in this State, upon petition as hereinafter provided for, are hereby authorized to purchase and provide seed-grain, feed, provisions, and other necessary supplies, and to furnish the same to the inhabitants of their several counties who, by reason of drouth, hail or other unfavorable climatic conditions, have been rendered financially unable to procure the same."

It is to be noted that the words "seed grain, feed, provisions, and other necessary supplies. . . ." appear in that Chapter.

Chapter 21, Revised Codes of Montana, 1921, was repealed in its entirety by Chapter 22, Laws of 1935.

Section 4702, Revised Codes of Montana, 1921, called for applicants for the relief to execute a promissory note, and if the Board of County Commissioners so decided the applicant could be required to give security for the relief.

In repealing Chapter 21, no mention was made of cancellation of the outstanding obligations which arose thereunder.

Both the Seed Grain obligations and the Drought Relief obligations are obviously included in the purview of Chapter 44, Laws of 1949. Those are specific relief provisions under which obligations arose, some of which are still extant.

The Hail Insurance Act was Chapter 167, Laws of 1917. It created a permanent State Board of Hail Insurance and set up provisions for the State to insure crops in part against hail loss. It was not passed to meet any particular emergency, and is not a relief act in the sense that those specific seed loan and Drought Relief acts are relief acts.

I think it is apparent, after an examination of the particular relief acts specified, and the history of those acts, that it was the intention of the Legislature in Chapter 44, Session Laws of 1949, to include those obligations clearly of a relief nature. I do not believe that the hail insurance premiums can be held to fall into the same category as the Drought Relief obligations.

The fact that, as you inform me, none of the committee of the recent Legislature discussed the cancellation of premiums with you, can not be decisive, but it most certainly is persuasive of the conclusions here reached.

In view of my opinion as to the nature of the obligations to be cancelled, it is not necessary to examine the remaining qualification set forth above, that is, whether or not the collection of past due hail insurance premiums is barred by Section 9029, Revised Codes of Montana, 1935.

It is therefore my opinion that Chapter 44, Montana Session Laws 1949, does not apply to and direct the cancellation of all hail insurance premiums which have been delinquent for 8 years or more.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.