

OPINION
66-129

May 5, 1966 (OPINION)

The Honorable K. O. Nygaard

Commissioner of Insurance

RE: Insurance - Fire and Tornado Fund - Coverage of Property in

Leased Offices

This is in response to your letter in which you ask whether personal property located in offices in privately owned buildings at Fargo, Minot and Grand Forks, North Dakota, but belonging to and being used by a department of the State, such as the Tax Department, is insurable in the Fire and Tornado Fund.

The answer to the question rests primarily upon the statutory provisions which in this instance is Section 26-24-01, subsection 4, of the North Dakota Century Code, which provides as follows:

DEFINITIONS. In this chapter unless the context or subject matter otherwise requires: * * *

4. Permanent contents shall refer only to such public property usually kept or used in or about public buildings insured in the fund and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms and in or on railway cars. Permanent contents, as used in this chapter, shall not, however, include automobiles, trucks, tractors, road machinery or similar property used principally outside of such buildings."

Section 26-24-01, Subsection 4, as quoted herein is subject to construction because of its uncertain language. It is ambiguous and under some interpretations it can bring about absurd and ridiculous results. In construing the act, we must assume that the legislature did not deliberately enact ridiculous or ambiguous legislation. Every effort should be made to eliminate such construction. Said section must also be construed in view of and in harmony with the underlying purpose and related statutes. It is noted that section 26-04-04 requires that public buildings and the permanent contents therein belonging to the state shall be insured in the State Fire and Tornado Fund. This provision is clear and unambiguous and not subject to construction.

As to the rejection of risks, we are unable to find any specific provisions other than section 26-24-16 pertaining to rejection of risks which would authorize any officer or government body to insure public buildings with any insurance company other than the State Fund. Section 26-24-16 apparently applies only to buildings. What

about the personal property, which is your question here - there is no provision for rejecting insurance on personal property and securing coverage from some other source. We do not believe that this means it may not be insured at all or that the officer in charge is to act at his own peril and risk.

We do not believe that the legislature intended to place both the Insurance Commissioner and the officer in charge of the personal property to choose between "Scylla and Charybdis", which would be the result if the language were given a literal meaning. We believe the language, "* * * such public property usually kept or used in or about a public building * * * and * * * public property usually kept or used in or about all buildings used for public purposes * * *", as found in section 26-24-01(4) is sufficiently broad enough to include personal property which is usually kept in a public building or used for a public purpose as coming within the term "permanent contents" as defined, even though it is at a different location on a temporary or semi-temporary basis. We believe that section 26-24-01(4) contemplates the inclusion of all public personal property, except such as is not usually used within a building and as to such property not usually used or found within a building, if same is within one hundred feet or is on a sidewalk, street, alley, yard, detached platform or on railway cars can be included. One construction of said section would bring about a result that, if the personal property were on a sidewalk or alley in a city, it would be insurable, but because it is in a non-public building it is not. We are sure that the legislature of 1944, when the act was adopted, did not intend any such nonsense.

It is therefore our opinion that the personal property in question is insurable in the State Fire and Tornado Fund, if the personal property belongs to and is being used by a state department and is such property which is usually found and used within public buildings for public purposes, even though it is temporarily housed and used in a non-public building.

HELGI JOHANNESON

Attorney General