

**OPINION
70-188**

March 9, 1970 (OPINION)

Mr. Kenneth E. Raschke
Commissioner
State Board of Higher Education

RE: Insurance - State Fire and Tornado - Proceeds Available for Reco

This is in response to your letter in which you state as follows:

On January 9, 1970 fire destroyed two connected structures at the University of North Dakota - Ellendale Branch. These structures were the two main instructional and office buildings at the school.

The above buildings were covered by insurance through the State Fire and Tornado fund in the following categories and in the following amounts:

BUILDINGS:

Home Economics Building	\$ 75,297
Carnegie Hall	195,922
TOTAL	\$271,219

CONTENTS:

Home Economics Building	\$ 48,915
Carnegie Hall	141,071
TOTAL	\$189,986

DAMAGE TO OTHER BUILDINGS:

Fleming Hall	\$ 4,203
Armory (old)	431
Cafeteria	815
TOTAL	\$ 5,451

TRANSIT CONTENTS:

Equipment belonging in another building	\$ 3,809
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TOTAL INSURANCE PROCEEDS \$470,46

You then ask: "Can the portion of the proceeds designated as content coverage be used for construction purposes?"

Basically, in this State before any money may be expended an appropriation must first have been made for same. (Section 186, North Dakota Constitution.)

This office on previous occasion has held that proceeds of an insurance policy constitute appropriated money and may be used to replace the losses.

This conclusion is based, in part, on the provisions of section 26-24-19 of the North Dakota Century Code and the policy itself. The policy permits the insurance company (North Dakota Fire and Tornado Fund), at its option, to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time and upon giving notice to do so. We draw little or no distinction whether the property is replaced by the insurer or the insured. If the proceeds are used to replace, they are considered the same as appropriated money.

We have also held in a former opinion that the property or building replaced with insurance proceeds must be located substantially on the same general location and must also be for substantially the same purpose. This is the only conclusion we can justify on the theory that the money is appropriated. The money was initially appropriated for such building and contents, thus if the insurance proceeds are used for replacement they are the same as appropriated funds if the funds are used for the same purpose. If the proceeds are used for other than replacement, it would be the expenditure of money for which no appropriation had been made.

If the money is not used for replacement, the Legislature would have to appropriate the money designating the purposes for which it may be expended. It is conceivable that the Legislature might wish to use the funds in some other manner or for a different purpose, keeping in mind the future educational needs and purposes.

It is, therefore, our opinion that the insurance proceeds in the amount of \$271,219.00 for the two connected buildings which were destroyed may be used to replace or construct a similar type building having substantially the same purpose and general location.

It is our further opinion that the insurance proceeds for the contents which were lost in the same building amounting to \$189,986.00 may not be used for erecting or constructing a building. These proceeds, if they are to retain the characteristics of appropriated money, would have to be used to replace the contents of the building.

It is our further understanding that the building and contents were insured for ninety per cent of their true value. Thus, if other funds are legally available a building could be constructed for the total amount of the initial value of the building. In this instance, such amount would be approximately \$301,544.00.

HELGI JOHANNESON

Attorney General