

**OPINION
45-144**

July 16, 1945 (OPINION)

INSURANCE

RE: State Property - Additions to Buildings

This office is in receipt of three letters, all dated July 10, 1945, one signed by you as warden of the state penitentiary and two signed by you as manager of the twine and cordage plant, all relating to various policies of insurance issued by the state fire and tornado fund of the office of state insurance commissioner.

It is our understanding that you desire our opinion on questions arising out of the following facts:

1. You state that last year insurance was applied for on old buildings, which had been insured with the Fund for more than five years, that such insurance was in addition to other insurance carried with the fund, and you desire the opinion of this office as to whether or not the additional insurance requires payment of premiums for a five year period under the provisions of section 26-2414 of the North Dakota Revised Code.
2. You also desire our opinion as to whether or not new buildings or structures erected at or in connection with the state penitentiary constitute new construction within the intent and meaning of section 26-2414 of the Revised Code.
3. You say that policy No. 28911 in the amount of \$150,000.00 was issued by the state insurance department on August 1, 1944, to cover twine and cordage stock for a period of one year, that two years ago similar insurance was written by the Insurance Department of fifty percent premium charge was made, that new the Insurance Department explains that liability under policy No. 28911 was reinsured, and that the premium rate now charged is a one hundred percent rate instead of the fifty percent rate charged in the previous year. You desire our opinion as to whether a premium based on the one hundred percent rate is a valid charge.
4. You state that the penitentiary operates a twin and cordage plant in which twine and cordage are being manufactured, that the stock of twine and cordage is being constantly replaced as twine and cordage are being manufactured and said, and that you desire our opinion as to whether or not the insurance on such stock constitutes a new risk each year.

In answer to your first question, we call to your attention section 26-2414 of the North Dakota Revised Code of 1943, which reads as follows:

Any property which shall not have been insured in the fund for a period of at least five years shall be charged a premium equal to fifty percent of the rate established by the fire underwriters inspection bureau. After any such property shall have been insured in the fund for a period of five years, it shall not thereafter be chargeable with any insurance premium but shall not be subject to assessment as provided in this chapter. During the period that any such property shall be subject to any assessment to restore the reserve fund."

Construing this section literally, it would logically follow that any property which has been insured with the fund for a period of five years for any amount whatsoever is not chargeable with any insurance premium unless it is necessary to restore the Fund to the sum of two million dollars, and that in that event such property is subject to assessment as provided in section 26-2413 of the Revised Code, as amended by section 2 of chapter 28 of the Special Session Laws of 1944. Such construction should imply that although the liability or risk assumed by the Fund may have been increased manyfold, nevertheless no premium may be charged but that such property is liable only to assessment.

In this connection it is our opinion that chapter 26-24 of the Revised Code, as amended, must be construed as a whole and that it is not sufficient to rely only on the provisions of one section contained in said chapter. In other words, it is our opinion that the provisions of section 26-2414 of the Revised Code must be interpreted and construed in the light of all of the provisions of chapter 26-24 and acts amendatory thereof.

It clearly was not the intention of the Legislature that the state fire and tornado fund should, or could, be impaired by requiring it to assume risks or liabilities which, in the judgment of the actuary of the insurance department, might dangerously deplete the fund. In administering the Fund, the state insurance commissioner must necessarily be vested with considerable discretion as to the application and interpretation of the statutes, the legislative intent of which may be ambiguous or not definitely ascertainable from the language thereof.

It is our opinion that the state commissioner of insurance may, if he deems it essential for the safety and best interests of the fund, regard additional insurance as a new risk in the same way as he is required to regard a new building costing the equivalent of such additional insurance as a new risk. And it is our opinion that he is authorized to require the payment of premiums on such additional insurance until it has been carried for a period of five years.

Answering your second question, it is our opinion that the provisions of section 26-2414 of the Revised Code, with reference to new construction, are plain and unambiguous. Said section definitely and clearly provides that "any property which shall not have been insured in the fund for a period of at least five years shall be charged a premium equal to fifty percent of the rate established by the fire underwriters inspection bureau.---" plus, of course, the statutory policy fee.

Answering your third question, we beg to advise you that we have not found any statutory authority for an assessment of one hundred percent premium based on the fact that the twine and cordage stock in the plant at the penitentiary was reinsured by the insurance department. Section 26-2421 requires the cancelation of reinsurance policies as of August 1, 1943. However, before giving our opinion as to the validity of such one hundred percent charge, we request that you obtain and submit an explanation of the manager of the fund as to his authority for making such charge.

In reply to your fourth question, it is our understanding that the business of the twine and cordage plant at the penitentiary is analogous to any wholesale or retail mercantile establishment. Stock is constantly sold and constantly replenished, that is to say, your stock of twine and cordage is constantly renewed. On account of the turnover, the policy of insurance does not at any given time, especially during the harvest season, cover the same stock as was on hand when the policy was issued. The insurance covers stock on hand at any time within the period of the policy, and not stock manufactured or acquired at any certain time. It is, therefore, our opinion that when stock of twine and cordage has been insured in the fund for a period of five years, the assessments provided by section 26-2413 of the Revised Code, as amended, become applicable and that payment of premiums is no longer required except an additional insurance taken out within the five years' period.

NELS G. JOHNSON

Attorney General