

**OPINION
47-144**

August 15, 1947 (OPINION)

INSURANCE

RE: State Institutions - Re-insurance

This will acknowledge your letter of August 14, 1947, in which you refer to section 26-2422 of the 1943 Revised Code, as amended by section 4 of chapter 219 of the 1947 Session Laws, which requires that the Commissioner of Insurance procure and keep in force a policy or policies of reinsurance or excess insurance on the North Dakota State Mill and Elevator, the Twine and Cordage Plant, and on any and all other extraordinary risks of like nature owned by the State of North Dakota or any of its political subdivisions, by not less shall be covered by such reinsurance or excess insurance below \$100,000.00. The cost of such reinsurance or excess insurance or extraordinary industrial risks shall be paid to the State Fire and Tornado Fund by the industry or governing board of such industry upon presentation by the State Fire and Tornado Fund of a bill for such reinsurance or excess insurance.

The statute does not say what is to be done with the money collected for such reinsurance or excess insurance furnished to the North Dakota State Mill and Elevator, the Twine and Cordage Plant, or on any risk of a like nature, nor how it is to be handled.

I understand from your letter that in compliance with the terms of this statute the State Fire and Tornado Fund has received and accepted bids for reinsurance or excess insurance on the State Mill and Elevator and the Twine and Cordage Plant; that awards have been made and the policies are now in your hands. The question arises, under this statute, how the money is to be handled when collected from the State Mill and Elevator at Grand Forks and the Twine and Cordage Plant at Bismarck.

It is, of course, obvious that the insurance companies furnishing the policies for the reinsurance or excess insurance must be paid and that it was contemplated that when the State Fire and Tornado Fund received payment from the industry or industries involved or the governing board of any political subdivision that the money so collected be used for payment of the policies.

The Commissioner of Insurance, through the State Fire and Tornado Fund, is made the agent of the state to procure the reinsurance or excess insurance. The money collected from the industry or industries or political subdivisions involved never becomes the public money of the state. It is collected for a specific purpose; that is, to reimburse or make payment to the insurance companies that furnished the policies for the insurance contracted.

I understand that the funds of the State Fire and Tornado Fund are drawn upon by the department without the presentation of any voucher to the state auditor. Since the Commissioner of Insurance, through the State Fire and Tornado Fund, is merely performing a function

designated by statute, it appears to me that the money collected from the industry or industries or political subdivisions involved, he may handle these funds in exactly the same manner as other funds that come to the State Fire and Tornado Fund, and that if the money is deposited in a special account designated for the purpose of paying for this type of insurance that the same may be paid directly by the State Fire and Tornado Fund, upon presentation and audit of bills for the insurance furnished.

NELS G. JOHNSON

Attorney General