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### Opinion of the Attorney General

P. O. Sathre

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## OPINION OF THE ATTORNEY GENERAL

August 21, 1948

Hon. Otto Krueger  
Commissioner of Insurance  
Bismarck, North Dakota

Dear Mr. Krueger:

Re: McHenry County Poor Farm -  
Insurance Loss - Sec. 5-153-79

Your letter of August 19 has been received and contents noted.

You state you have at hand proof of loss from McHenry County in the amount of \$2,000, covering destruction of machine shed on the poor farm on the 19th day of February, 1948.

Your adjuster's report shows that this property, consisting of all buildings and 700 acres of land, was sold by McHenry County under contract of deed to one Fredrick Wolhowe in November, 1947, for the sum of \$15,200, and that one fourth of the purchase price was a down payment by the purchaser. The question you present now is whether or not the Fire and Tornado Fund is liable under its policy of insurance for this loss, since prior to the time of the loss, ownership of the property involved had changed.

For the purpose of this opinion, I am assuming that the property in question was sold by McHenry County under contract for deed and that the purchaser took possession thereunder and was in possession at the time of the loss. The question then arises whether or not the county had an insurable interest in the property covered by the policy issued by the State Fire and Tornado Fund.

Section 26-2404 N.D.R.C. 1943 provides that

"The public buildings and fixtures and permanent contents therein belonging to the state, the various state industries, and the political subdivisions of the state, shall be insured under the provisions of this chapter.

Section 26-2405 enumerates certain exceptions, but the same are not pertinent here.

When McHenry County sold this property, the right of use and possession was vested in the purchaser. The county held merely a legal title and the only right that the county had was the right to foreclose the contract, if default should be made in its terms by the purchaser. The State Fire and Tornado Fund is not authorized to write insurance on property owned by private individuals. Under the facts stated in your letter, it is the opinion of this office that even though McHenry County is the legal owner under the contract of sale, nevertheless, the purchaser is the equitable owner with all the rights of possession and use without any interference by the county, so long as he complies with the terms of the contract. It follows, therefore, that the county has no insurance

interest covered by the insurance policy issued by the State Fire and Tornado Fund.

However, the county would be entitled to a refund of any unearned premium after the sale of the property to Fredrick Wolhowe.

Very truly yours,  
Nels G. Johnson  
Attorney General  
By P. O. Sathre  
Assistant Attorney General

POS:nb