they are required to be members thereof under the compulsory requirements of its provisions except those specifically exempt under the provisions of said Act [Acts of 1951, Ch. 64, Sec. 1, "employee," subsections (a) to (e), as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1604, supra], or as may be otherwise specifically exempted by law.

OFFICIAL OPINION NO. 45

July 15, 1954

Mr. Harry E. Wells
Insurance Commissioner
Department of Insurance
240 State House
Indianapolis, Indiana

Dear Mr. Wells:

This is in reply to your letter of June 14, 1954, in which you inquire as to the following:

"Can Indiana legally collect a Fire Marshal Tax on the fire portion of Inland Marine premiums paid to Insurance Companies that are doing business in Indiana?"

The Acts of 1913, Ch. 192, Sec. 18, as amended, as found in Burns' Indiana Statutes (1950 Repl.), Section 20-818, provide:

"All fire insurance companies duly licensed to transact business in the state of Indiana shall pay into the state treasury on or before March 1 and September 1 of each year, an amount equal to three-fourths of one per cent (¾%) of the gross premiums of each company, received on fire risks written in the state, after deducting therefrom return premiums and considerations received from reinsurance, as reported by them to the auditor of the state of Indiana for the payment of premium taxes as now provided by law; said semi-annual payment by such companies shall be in addition to all taxes and license fees now required by existing law or laws to be paid by fire insurance companies do-
ing business in Indiana, and which fund so paid in and created shall be known as the Fire Marshal Fund.” (Our emphasis)

In 1937, request was made of the Attorney General for an Official Opinion concerning whether the above section of the statute, then being Acts of 1927, Ch. 208, Sec. 1, was applicable to both domestic and foreign fire insurance companies doing business in Indiana. The Attorney General then stated: “It is my opinion that the language of the statute covers all fire insurance companies that are licensed to do business in the State of Indiana, both foreign and domestic.” [1937 O. A. G., page 79, at page 80.]

Note should be taken that the Acts of 1937, Ch. 286, Sec. 2, as found in Burns’ Indiana Statutes (1950 Repl.), Section 20-818a and the Acts of 1913, Ch. 192, Sec. 19, as found in Burns’ Indiana Statutes (1950 Repl.), Section 20-819 provide in essence how the money collected by said tax is to be expended and further provides a penalty for any duly licensed, authorized or incorporated fire insurance company that fails or refuses to pay said tax.

In 1939 an Official Opinion was requested of the Attorney General concerning the interpretation of the above section of the statute as now in force and being Acts of 1937, Ch. 286, Sec. 1, which request posed a question almost identical with yours except that it dealt with casualty companies, the question being whether that portion of premiums received by a casualty company attributable to fire risk coverage was taxable under the foregoing section. In answer thereto the Attorney General then held:

“While casualty companies or other organizations writing fire premiums are not, strictly speaking, fire companies, it is my opinion that when they do write fire risks as permitted under the Indiana insurance laws, they are to be understood as included for the purposes of the section under consideration as fire companies and should pay the tax.

“Fire companies cover many forms of insurance risks other than fire, such as lightning, earthquake, tornado, hail, and many others, not only on buildings
but also upon every description of personal property. It is not reasonable to believe that the legislature intended the tax in question to be collected alone of actual fire companies when a large part of their business did not involve fire, and on the other hand permit casualty companies and other organizations writing fire risks to go untaxed.

"The section of the statute under consideration does not use the term fire companies in a necessarily exclusive sense. The section does not define fire companies and its apparent purpose is to require the tax as related to fire risks, the term fire companies being a loose, but not improper, designation of such companies and organizations as write such fire risks." [1939 O. A. G., page 175.] (Our emphasis)

The 1937 O. A. G. and the 1939 O. A. G. were further sustained in 1945 when the then Attorney General reaffirmed the two previous opinions and stated that it was his further opinion that that portion of automobile insurance premiums pertaining to fire risks was subject to the payment of said fire marshal tax. [1945 O. A. G., page 305, No. 72.]

I am in accord with the above cited past opinions of the Attorney General. Should further support be needed for this conclusion, please note the following.

This section of the statute does not levy the tax on the total gross premiums of all fire insurance companies, irrespective of the risks for which the premiums are received. Instead, it levies the tax only on gross premiums "received on fire risks written in the state * * *. Thus, it is the nature of the risk for which the premiums are received rather than the nature of the company by which the levy of the tax is fixed.

It is therefore my opinion that the state of Indiana may legally collect the fire marshal tax on the fire portion of inland marine premiums paid to insurance companies that are doing business in Indiana.