

However, Section 2 of Chapter 162 of the Acts of 1935 (Sec. 39-3202, Burns' 1933, R. S.) provides that the Indiana insurance law specifically includes interinsurers.

(7) Finally, it may be argued that the petitioning company is not an insurer within the terms of Chapter 50 of the Acts of 1947. However, in the Indiana insurance law (Sec. 3, Chapter 162, Acts of 1935; Sec. 39-3203, Burns' 1933 R. S.) "insurer" is defined to specifically include reciprocals or interinsurers.

I am, therefore, of the opinion that the applicant is eligible under Chapter 50 to make multiple line coverage. However, it does seem to me that the declaration filed by the applicant should be amended to cover the kind or kinds to be effected or exchanged.

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OFFICIAL OPINION NO. 37

April 19, 1948.

Hon. Frank T. Millis,  
Treasurer of State,  
State of Indiana,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of April 12, 1948 in which you ask whether money can be obtained from the Post War Building Fund for the purchase of a building by the State of Indiana for the use of the Unemployment Compensation Division. This involves the question of whether there has been an appropriation of said fund or a part thereof for such purchase.

Sections 1 and 2 of Chapter 234 of the Acts of 1947 are as follows:

"Sec. 1. That there is hereby appropriated from the Postwar Construction Fund created by Section 13 of Chapter 357 of the Acts of 1945 the sum of twenty-five million, seven hundred thirty-three thousand, nine hundred eight dollars (\$25,733,908.00) which appropriation shall be known as the Postwar Construction Contingency Appropriation to be used by the State Universities and Colleges which are supported in whole

or in part by State funds, the State penal and benevolent institutions, and any State agency for the purpose of construction, reconstruction, rehabilitation and repair of State properties, including equipment for such properties and for the purchase of land.

“Sec. 2. The above appropriation shall be allocated by the Budget Committee with the approval of the Governor to the board of trustees of any of the state universities, state colleges, state benevolent institutions, state penal institutions, or to any commission or board authorized by law to provide housing for state wards or to any facility of the state government which may require such allocation.”

I assume that your question contemplates the purchase of a lot or parcel of real estate which is improved by a building erected thereon. The question then is whether the language “purchase of land” includes the purchase of a lot or tract of “land” upon which is erected a building.

In the case of *Stauffer v. Cincinnati, etc., Railroad* (1904), 33 Ind. App. 356, at page 359, the court said:

“When the appraisers were appointed in the condemnation proceedings, it was their duty to appraise the land taken. The house on the land taken was a part of the realty, and could not be considered by the appraisers except in connection with the land. ‘The term land,’ says the author in Lewis, *Eminent Domain* (2d ed.), § 285, ‘in statutes conferring power to condemn, is to be taken in the legal sense, and includes both the soil and the buildings and other structures on it, and any and all interests therein.’ \* \* \*”

In the case of *Isham v. Morgan, et al.* (1832), 9 Conn. 374, at page 376, it is said:

“\* \* \* It is unnecessary to cite cases on so plain a subject; and I will content myself merely with an allusion to Lord *Coke*, on this point. 1 *inst.* 4. *a.* The word *land*, he says, in its legal signification, comprehends any ground, soil, or earth whatever; and it also has an indefinite extent upwards, as well as down-

wards. It therefore includes all castles, houses, and other buildings standing thereon; and downwards, whatever is in a direct line between the surface and the centre of the earth. 2 Bla. Comm. 17, 18. 1 Cruise's Digest, 58, § 3."

In the case of *C. I. & K. Railroad Co. v. Knuffke* (1887), 36 Kans. 367, at page 368, the court said:

"\* \* \* Authority is given to appropriate land, and that term is sufficiently broad to include buildings of a permanent and fixed character, such as those in question here. \* \* \*"

In the case of *People, ex rel. International Navigation Co. v. Barker, et al.* (1897), 153 N. Y. 98, at page 100, the court said:

"\* \* \* Under the statute in force, all lands within this state, owned by individuals or by corporations, shall be liable to taxation; and the term 'land' is to be construed to include the land itself and all buildings and structures erected upon or affixed to the same. \* \* \*"

In the case of *Matter of City of New York v. Mitchell* (1905), 183 N. Y. 245, at page 249, the court said:

"\* \* \* Under the General Tax Law and by the general understanding, the term 'lands,' when used with reference to assessment for purposes of taxation, includes with the land, whether above or under water, all constructions, which have been erected upon, or affixed, thereto."

It is clear that the word "land" as used in the statute above quoted includes not only the lot or parcel or tract of ground but also the building, structures and improvements thereon. Therefore, the purchase of a lot or tract of ground and a building thereon is within the appropriation set forth in Chapter 234 of the Acts of 1947.

I call your attention to the fact that before any money would be available from this appropriation it would have to be allocated by the Budget Committee with the approval of

the Governor to the proper state agency for that purpose. In addition, the provisions of Chapter 279 of the Acts of 1947 relative to allotment would have to be complied with.

The proceeds of the federal share of the unemployment compensation tax are used to pay the administrative expenses of state employment security agencies. I understand that the federal authorities will consider the cost of a building (amortized over a ten-year period) as an administrative expense to be paid by the federal government, but that this payment will not impair the title of the state to the property. Such arrangements would not affect the authority to purchase the property from the appropriation in question.

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OFFICIAL OPINION NO. 38

April 28, 1948.

Hon. John H. Nigh, Director,  
Department of Conservation,  
140 North Senate Avenue,  
Indianapolis, Indiana.

Dear Sir:

I have your letter as follows:

"I request an official opinion of your office on the question of whether the Department of Conservation has authority under Section 93, Chapter 21, Acts of 1937, to establish a spawning ground on a certain water channel located on private land at Lake Maxinkuckee.

"Also, I request your opinion on whether the Department of Conservation has authority under Chapter 301, Acts of 1947, to prosecute or enjoin the owner of land from continuing to maintain and use for fishing a water channel located on his property which was created by cutting into the shore line of Lake Maxinkuckee prior to the enactment of this statute."

I am further informed that the water channel referred to by you consists of a circular channel of water in the neighborhood of forty feet wide and six to twelve feet deep, which