

1971 O. A. G.

OFFICIAL OPINION NO. 24

September 27, 1971

Mr. Carleton L. Phillippi
Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis, Indiana

Dear Chairman Phillippi:

This is in response to your letter of September 22, 1971, asking the following question:

“Has the State Board of Tax Commissioners authority to take recovered insurance payments into consideration in making its determination to re-assess and grant relief on property that has been partially or totally destroyed by flood, fire, or other disaster?”

ANALYSIS

This question, as you point out in your letter, has been previously answered in an unofficial opinion dated May 12, 1965, by the then Attorney General John J. Dillon, addressed to Senator Jack H. Mankin, Chairman of the Legislative Disaster Relief Committee. It was also answered again in another unofficial opinion dated January 19, 1971, addressed to you and written by Assistant Attorney General Scott T. Miller. Your letter also reiterates that your own board administratively made its own determination coinciding with the advice from former Attorney General Dillon and Assistant Attorney General Miller, both of whom were correct, in my opinion, in the advice they gave you.

Former Attorney General Dillon pointed out that “the State Board of Tax Commissioners has considerable leeway in determining the manner of making such a reassessment and the elements to be considered.”

He further stated that “it would appear that in a reassessment of property pursuant to Burns’ 64-715, a material element to be considered by assessing officials would be the amount of insurance recovered on the property.”

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Assistant Attorney General Miller pointed out with respect to former Attorney General Dillon's opinion that "the essence of the opinion in regard to the receipt of insurance proceeds was that Burns' Section 64-715 was enacted to lessen the tax burden of a taxpayer suffering a loss from a disaster, and that, in a situation where the taxpayer had been fully reimbursed for any loss by insurance, there would in fact be no loss and hence no application of the benefits provided by Burns' Section 64-715 to such taxpayer."

CONCLUSION

To reiterate the legal findings of former Attorney General John J. Dillon and Assistant Attorney General Scott T. Miller, the purpose of Burns' Section 64-715 (IC 1971, 6-1-16-7) is to give property tax relief to a taxpayer who suffers a real loss as a result of some disaster. And, it is not the purpose of the statute to give the same full tax relief to a person who has already been paid in full for all of his loss by insurance. The benefits flowing from Burns' Section 64-715 *supra*, would only be applicable where the taxpayer has in fact suffered an actual loss due to some disaster for which he has not been reimbursed otherwise.

It also follows that to the extent insurance proceeds reduce or eliminate a loss, the benefits to be derived from Burns' Section 64-715, *supra*, will be correspondingly reduced or eliminated. If the Legislature intends further relief in this area, it can do so by further legislative action.