Honorable O. P. Lockhart, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. 0-5539
Re: Mortuary funds of mutual assessment associations; whether such funds may be used to pay the occupation tax levied by Article 7064a, Vernon's Annotated Civil Statutes.

The answer to the question above stated, submitted in your letter of August 11, 1943, is ruled by our Opinions numbered 0-2988 and 0-5337.

In the latter opinion, a copy of which you have, we ruled that mortuary or reserve funds are not taxable as income under the Federal Revenue Act of 1936. Our conclusion in that opinion was based upon the proposition that the funds are, by legislative act, irrevocably dedicated for the use and protection of the policyholders and are not income.

In our Opinion No. 0-2988 we ruled that the tax levied by Article 7064a, Vernon's Annotated Civil Statutes, could not be paid out of the mortuary fund because of Section 12 of Article 5068-1, Vernon's Annotated Civil Statutes. We enclose a copy of that opinion for a clear discussion of the matter.

We therefore advise that the occupation tax above referred to cannot be paid out of the mortuary fund but must be paid out of the statutory expense fund as provided by law.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By /s/BWB Chairman

By /s/Elbert Hooper

Elbert Hooper
Assistant

APPROVED SEP 2, 1943