



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~ATTORNEY GENERAL~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

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

Dear Sir:

Opinion No. 0-5539
Re: Mortuary funds of mutual assess-
ment associations; whether such
funds may be used to pay the oc-
cupation 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 num-
bered 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 in-
come 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 pro-
tection 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 Arti-
cle 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 re-
ferred 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

EH:db:wc

By s/Elbert Hooper
Elbert Hooper
Assistant

APPROVED SEP 2, 1943
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman