

Opinion No. 59-42

April 24, 1959

BY: FRANK B. ZINN, Attorney General

TO: Office of the District Attorney Fifth Judicial District Carlsbad, New Mexico. Attention: Mr. Charles A. Freezer, Assistant District Attorney

Constables and justices of the peace are not eligible for group insurance as provided by New Mexico statutes.

OPINION

{*63} This is in reply to your recent query:

Are constables and justices of the peace eligible for group insurance where county employees have elected to take advantage of group insurance -- the county to pay 20% of the cost of such policy?

It is my belief that constables {*64} and justices of the peace are not eligible for group coverage.

Section 5-4-12, N.M.S.A., 1953 Comp., reads as follows:

"All state departments and institutions and all political subdivisions of the state of New Mexico are hereby authorized to cooperate in providing group or other forms of insurance for the benefit of eligible employees of the respective departments, institutions and subdivisions; provided that the contributions of the state of New Mexico or any of its departments or the political subdivisions of the state shall not exceed twenty per centum (20%) of the cost of such insurance."

Section 5-4-13, N.M.S.A., 1953 Comp., reads as follows:

"Said departments and institutions and all political subdivisions of the state shall be authorized to deduct from said employees' salaries, who may elect to be covered by group or other insurance under this act [5-4-12 to 5-4-14], for the payment of premiums on said policies of insurance."

It is stated in Section 5-4-14, N.M.S.A., 1953 Comp., as follows:

"All acts and parts of acts in conflict herewith are hereby repealed. Provided that the provisions of this act [5-4-12 to 5-4-14] shall not effect [affect] any contract of group insurance now maintained or in force; nor shall the provisions of this act repeal, alter, or amend any special statute authorizing the carrying of such insurance by the state of New Mexico or any of its departments or the political subdivisions of the state."

Paragraph 5 of Section 5-5-1, N.M.S.A., 1953 Comp., defines the term "public employer" as meaning the State of New Mexico or any municipality in the State of New Mexico. Paragraph 7 of the same section defines the term "employee" as being "any person, including any elected official who is in the employ of any public employer and whose salary is paid by warrant or any other medium from any income of said public employer . . ." The latter sections are a part of the New Mexico Retirement Act. These sections more nearly define the term "employee" than can be found elsewhere in our statutory law.

Notwithstanding the desire of this office to give a liberal interpretation which would make it possible for constables and justices of the peace to enjoy the benefits of group insurance, it would seem that the wording of Section 5-4-13, N.M.S.A., 1953 Comp., definitely precludes the possibility of group coverage for these officials.

The income of constables and justices of the peace is derived exclusively from fees not salaries.

In view of the law quoted and the reasoning set forth above, it is my opinion that constables and justices of the peace are not eligible for group insurance.

Carl P. Dunifon

Assistant Attorney General