

## **Opinion No. 63-25**

March 28, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Mr. E. M. Fisher City Clerk Lordsburg, New Mexico

### **QUESTION**

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1. What is the maximum amount that a city may contribute to a group insurance plan for city employees?
2. May the city contribute a greater share of the premium of each policy if the policy contains "on the job coverage" enabling the city to make a savings on Workmen's Compensation Insurance?
3. Does the contribution of the city apply only to the employee or does it also apply toward the premium on the whole policy which also covers the dependents of the employee?

#### **CONCLUSION**

1. The city may contribute a maximum of 20% of the total cost of the insurance.
2. No.
3. The contribution of the city applies to the total cost of the employee's insurance only.

### **OPINION**

#### **{\*50} ANALYSIS**

1. New Mexico Statutes Annotated 5-4-12 (1953) provides:

"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 percentum (20%) of the cost of such insurance."

This section allows cities to contribute 20% of the total cost of insurance for city employees. This is the maximum amount which a city may contribute to a group insurance plan for city employees.

2. Your question two does not change the answer to question one. Section 5-4-12 provides the exclusive method for insuring city employees, and the total amount of the contribution for their insurance.

3. Section 5-4-12 makes no provision as to the type of insurance which cities are authorized to contribute to, nor does it place any limitation on the extent of the coverage. It merely provides that the state or political subdivisions thereof may cooperate in providing group or other insurance for the benefit of its employees.

New Mexico Constitution, Article IX, Section 14, however, prohibits a municipality from making donations to private individuals.

**Nohl v. Board of Education**, 27 N.M. 232, 199 Pac. 373, (1921) is the leading case in the United States supporting the proposition that a political subdivision of the State may legally contribute to life and disability insurance for the employees of the subdivision.

{\*51} While it is clear that a municipality may constitutionally contribute to life, health, and disability insurance for its employees, we have found no authority allowing the coverage to be extended to include the dependents of the employees.

Until such time as the Supreme Court of this state has passed on the constitutionality of this question or the legislature has specifically authorized such an extension of coverage, we believe that it is unwise to advise a municipality that it is authorized to pay 20% of the total premium of insurance which covers not only employees, but also their dependents.

By: Joel M. Carson

Assistant Attorney General