

Opinion No. 65-137

July 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Harry Wugalter, Chief, Public School Finance, Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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1. Is it legal for a school board to pay one hundred percent of group life insurance premiums for employees?
2. Is it legal for a school board to pay one hundred percent of group health and accident insurance premiums for employees?
3. Is it legal for a school board to pay a portion of employees' insurance premiums for other than health and accident insurance?
4. Are group life insurance and health and accident insurance policies for which premiums are paid from operational funds biddable items?
5. Is a property insurance policy for which premiums are paid from operational funds a biddable item?
6. If insurance (of any type) is purchased from funds other than operational, such as activity, cafeteria, etc., is it exempt from the bid law?
7. Is workmen's compensation insurance a biddable item?

CONCLUSIONS

1. No.
2. No.
3. Yes.
4. No.
5. See Analysis.

6. See Analysis.

7. See Analysis.

OPINION

{*228} ANALYSIS

We will answer questions 1 and 2 together. The statutory provision authorizing the state and political subdivisions to contribute to employee insurance programs is Section 5-4-12, N.M.S.A., 1953 Compilation. As amended in 1965, this section provides as follows:

"All state departments and institutions and all political subdivisions of the state may cooperate in providing group or other forms of insurance for the benefit of eligible employees of the respective departments, institutions and subdivisions. The contributions of the State of New Mexico or any of its departments or institutions or the political subdivisions of the state except municipalities **shall not exceed twenty percent of the cost of the insurance.** The contributions of municipalities shall not exceed fifty percent of the cost of the insurance." (Emphasis added.)

As noted in Opinion No. 4286 (1943), a school district is a political subdivision and thus the above-quoted section is applicable thereto. The above section is optional with the departments, institutions and political subdivisions. It is permissive legislation only and they are not required to pay any contributions. But if they do participate, the employer contribution is expressly limited to a maximum of twenty percent of the cost of the insurance. This statute {*229} is the only one we find which authorizes political subdivisions to contribute to employee insurance plans. Hence we must answer your first two questions in the negative.

We answer your third question affirmatively. Section 5-4-12, supra, speaks in terms of "group or other forms of insurance." In view of this language the department, institution or political subdivision may contribute twenty percent of the premiums for types of insurance other than health and accident insurance. Opinion Nos. 5531 (1952) and 4286 (1943). What types are legal would have to be considered individually.

Your fourth question involves the Public Purchases Act since schools are subject to that Act. Section 6-5-1, et seq., N.M.S.A., 1953 Compilation. Classification of insurance under this Act as well as under the State Purchasing Act (Section 6-7-1, et seq.) has been fraught with certain difficulties. Opinion No. 3366 (1939); Opinion No. 4378 (1943); Opinion No. 57-36 (1957).

The latter opinion noted that Section 6-5-2 of the Public Purchases Act defines "goods" as follows:

"The word 'goods' as used herein shall include all goods, wares, merchandise, materials, supplies, furniture, equipment and every article **or thing** of whatsoever

description **purchased for the use or benefit of any purchaser** to which this act is applicable." (Emphasis added.)

The opinion stated that insurance being a "thing" and thus being "goods" by virtue of Section 6-5-2 was subject to bids under Section 6-5-4.

But the type of insurance that we are here dealing with is not "goods" under Section 6-5-2 since it is not "purchased for the use or benefit of the purchaser." It is purchased for the benefit of the employee, not the employer. In fact, Section 5-4-12 so states in the following language: "are hereby authorized to cooperate in providing group or other forms of insurance **for the benefit of eligible employees.**" (Emphasis added.) We see, then, that purchase of the type of insurance authorized by Section 5-4-12 is not subject to bid under the Public Purchases Act. See Opinion No. 3178 (1939).

The answer to your final three questions is the same, namely, when insurance is a "thing" ("goods") under the definition in Section 6-5-2, it is subject to bids unless it is the type of insurance policy on which standard rates for the same coverage is required by law. In such case the obtaining of bids would be a useless act and the legislature is not presumed to require a useless act. What fund the public moneys come out of would not seem to have any bearing on the question of necessity for bids.