Opinion No. 69-59

June 16, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Justin Reid, Assistant Attorney General

TO: Robert E. Kirkpatrick, Deputy Director, Department of Finance and Administration, Santa Fe, New Mexico

QUESTIONS

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With reference to a public employees group hospitalization insurance plan, is it lawful for governmental units of the state to pay up to the statutory maximum percentage of the full amount of the cost including dependent coverage?

CONCLUSION

Yes.

OPINION

*{*90}* ANALYSIS

By statute governmental units have been authorized since 1941 to pay a portion of the premium on "group or other forms of insurance for the benefit of eligible employees". Section 5-4-12, N.M.S.A., 1953 Compilation. The maximum amount that can be paid is 20% "of the cost of such insurance" except in the case of municipalities where the maximum is 50%. It is an employee benefit, which, while only a partial contribution, is still of substantial importance. As was said in an earlier opinion of this office:

"* * * such contribution is in fact an increment to a public employee's salary and is a benefit to the state or its subdivisions through its concommitant effect of attracting and maintaining capable public personnel in public positions. In such instance, a contribution to a limited maximum is not a lending of credit or a donation but an increase in the renumeration of a public employee for services rendered." (Opinions of the Attorney General, 1964, No. 64-84).

What we are being asked then is whether or not the legislature intended in the case of a group hospitalization insurance plan that the contribution of governmental units be computed on the premium charge for the individual employee alone or may they pay up to the maximum percentage of the total premium for an employee and dependents. The answer requires an interpretation of the statutory words "for the benefit of eligible employees".

In view of the purpose of such legislation, it is our opinion that the legislature did not intend to limit this employment benefit to the individual employee regardless of whether or not he had dependents. Even in 1941 it was well known that hospitalization insurance under group plans was available both for an individual and for an entire family. Had the legislature intended to offer this benefit to individual employees only, it would have been a simple matter so to provide. Similarly, when this law was amended in 1965 (Laws 1965, Chapter 181) such a limited intention could have been expressed but again was not.

Instead, the law continues to read in this regard as originally enacted. We see no reason why the law should not be given the broadest beneficial meaning of which its language is reasonably capable, in spite of an earlier reluctance of this office to rule definitively on the question (Opinions of the Attorney General, 1963, No. 63-25). The words "for the benefit of" the employee certainly can, and in our opinion should, be construed to include an employer's payment toward the premium of a group hospitalization insurance policy which covers both an employee and his or her dependents. The *{*91}* benefit to the employee is both direct and clear. The benefit to government is equally direct and clear. It is thus in a better position to compete in the labor market for competent public personnel, both those without and those with dependents.

To assume that the legislature intended otherwise in continuing over the years this broadly worded enactment on employee benefits would be unwarranted and we decline to do so.

It is therefore our opinion that it is lawful for governmental units referred to in Section 5-4-12, supra, to compute the percentage of their contribution to an employees group hospitalization plan based upon the entire cost for both individual and dependent coverage.

It should be pointed out that the statute is permissive, not mandatory. Thus, the practices which may have been followed in the past or may be adopted in the future continued to be a matter of policy decision under the law.