

## **Opinion No. 69-43**

May 13, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

**TO:** Harry Wugalter, Chief, Public School Finance Division, Department of Finance and Administration, Legislative Executive Building, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. Must a school district request bids on accident and health insurance for its employees due to the fact that the present insurer increased the rates without increase in benefits?
2. Must a school district re-bid its accident and health insurance when the employees want to increase daily room benefits and major medical benefits?

#### CONCLUSIONS

1. Yes.
2. Yes.

### **OPINION**

#### {\*66} ANALYSIS

In Attorney General Opinion 65-137, issued July 22, 1965 this office stated that it was not necessary for school districts to bid group life insurance and health and accident insurance. In 1968, the legislature amended the Public Purchases Act to include insurance, other than workmen's compensation, within its provisions. School districts must now bid group life insurance and health and accident insurance.

We realize that some school districts are still operating under an existing contract. These contracts were evidently entered into pursuant to a 1967 enactment of the Public School Finance Act, Section 77-6-6, which allowed school districts to estimate the cost of insurance policies for periods up to five years if a lower rate could be obtained by purchasing insurance for a longer term. This office from time to time has orally advised school districts that they need not re-bid insurance contracts entered into pursuant to this provision of the Public school Finance Act so long as the insurance contracts were not amended. However, we have consistently made it clear that once new contracts were entered into by school districts, they must be bid pursuant to the provisions of the Public Purchases Act.

In 1968 the legislature made it clear that school districts could enter into insurance contracts for a period not exceeding five years by amending the Bateman Act to provide an exemption for insurance. See Section 11-6-6.1, N.M.S.A., 1953 Compilation (Interim Supp.). Insurance contracts must now be re-bid at least once every five years.

The questions asked both involve a change in specifications or provisions after an insurance contract has been bid. The changes suggested are both material changes in specifications. It is our opinion that such changes in an insurance contract may not be made without following the bid procedures set forth in the Public Purchases Act. Any other conclusion would not only violate the spirit and intent of the Public Purchases Act, but would be fundamentally unfair to all other bidders. To allow the changes suggested in the questions above would allow state agencies and local public bodies to seek bids for one thing and then purchase another from the winning bidder. This clearly would violate the provisions of the Public Purchases Act.