

Opinion No. 73-69

November 6, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable James H. Koch State Representative P.O. Box 1926 Santa Fe, New Mexico 87501

QUESTIONS

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1. Would a trust fund, self-funded through contributions from employers and primarily established to provide for health and medical benefits to their employees, and dependents of those employees, be engaged in the business of insurance?
2. If such fund is engaged in the business of insurance, what requirements apply to its formation and functioning?

CONCLUSIONS

1. Yes.
2. See analysis and enclosure.

OPINION

{*137} ANALYSIS

In your request, you make the observation that the trust fund could be termed a form of "labor organization." Section 58-18-27, N.M.S.A., 1953 Comp., does exempt certain "labor organizations which issue benefit certificates and operate strictly not for profit" from the requirements of the "Act Relating to Insurance Companies Providing for the Organization, Licensing and Corporate Procedures of Domestic Stock and Mutual Insurance Companies . . .," being Sections 58-18-1 to 58-18-9, 58-18-11 to 58-18-27, N.M.S.A., 1953 Comp. To qualify for that exemption, Section 58-18-27, **supra**, requires that the labor organization be an insurance company "organized under the special laws specified" within that section. That section, however, does not cite a statutory provision which pertains to "labor organizations," although it does cite provisions pertaining to other types of insurance companies mentioned therein. It thus appears that for the type of trust fund you describe, there is no provision for its exception as an insurance company "organized under the special laws specified herein as such." Section 58-18-27, **supra**.

Section 58-1-1, N.M.S.A., 1953 Comp., defines "insurance" to mean "any form of insurance, bond or indemnity contract the issuance of which is legal in the state of New Mexico." It is our opinion that the program of the trust fund described may be likened to a type of "policy of sickness and accident insurance" defined in Section 58-11-1, N.M.S.A., 1953 Comp., as "any policy or contract of 'insurance against loss or expense resulting from the sickness of the insured . . ."

We think that the "group sickness and accident insurance" provisions of Section 58-11-15, N.M.S.A., 1953 Comp. (1973 P.S.) apply to the type of program you describe. Such insurance is defined as:

"A. . . . that form of sickness and accident insurance covering groups of persons, with or without their dependents, and issued upon the following basis:

* * *

(2) under a policy issued to an association, including a labor union . . . , which shall have a constitution and by-laws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least twenty-five members of the association for the benefit of persons other than the association or its officers or trustees, as such; or

(3) under a policy issued to any other substantially similar group which, in the discretion of the superintendent (of insurance), may be subject to the issuance of a group sickness and accident policy or contract."

We base our conclusion on the grounds that the trust fund will issue its own policy of coverage to certain employees belonging to labor unions, and the dependents of those employees. Those unions are organized and maintained for purposes other than that of obtaining insurance. And, the fund will provide a form of sickness insurance to indemnify the employees against loss or expense resulting from their illness.

The organizational and activity requirements for complying with the terms of the act relating to the regulation of sickness and accident insurance are too numerous to set out here. Thus, a copy of Sections 58-11-1 to 58-11-20, N.M.S.A., 1953 Comp., is enclosed for your review.

By: Harvey B. Fruman

Assistant Attorney General