# Opinion No. 88-58

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**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Andrea R. Buzzard, Assistant Attorney General

**TO:** Honorable Stephen D. Stoddard, State Senator, 326 Kimberly Lane, Los Alamos, NM 87544

## QUESTIONS

May Albuquerque Public Schools participate in the insurance coverages afforded by the Public School Insurance Authority Act?

## CONCLUSIONS

No.

## ANALYSIS

The purpose of the Public School Insurance Authority Act ("Act"), Sections 22-2-6.1 to 22-2-6.9 NMSA 1978 (Repl. 1986), is "to provide comprehensive core insurance programs for all participating public schools, school board members, school board retirees and public school employees and retirees by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage." Section 22-2-6.2. The Act creates the public school insurance authority ("Authority") "to provide for group health insurance and other risk-related coverage with the exception of the mandatory coverage provided by the risk management division on the effective date of the [Act]." Section 22-2-6.4. The Authority may procure insurance, negotiate insurance policies, self-insure a line of coverage, and collect and disburse premiums. Subsections 22-2-6.7(F), 22-2-6.7(G), and 22-2-6.8(A).

Subsection 22-2-6.9(A) provides: "A school district shall participate in the authority unless the school district is granted a waiver by the board [of directors of the Authority]." However, Subsection 22-2-6.3(G) defines "school district" as "a school district as defined in Subsection (J) of Section 22-1-2 NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students." (Emphasis added.) Because student enrollment exceeds sixty thousand students, Subsection 22-2-6.9 (A) does not require Albuquerque Public Schools ("APS") to participate in the Authority. Subsection 22-2-6.9(E) permits "educational entities" to petition the Authority to participate. However, Subsection 22-2-6.3(C) defines "educational entities" as, essentially, universities and other post-secondary educational institutions. No other provision addresses voluntary participation.

The General Appropriation Act of 1988, 1988 N.M. Laws, ch. 13, at 234-35, specified the percentage of the cost of insurance, with certain exceptions, that school districts must contribute for employee insurance, and further provided:

Notwithstanding the provisions of Section 22-2-6.3(G) NMSA 1978, the New Mexico public school insurance authority may enter into a joint powers agreement with the Albuquerque public schools to allow the Albuquerque public schools to participate in the insurance coverages of the authority. Such a joint powers agreement may be entered on the same terms and conditions of coverage for Albuquerque public schools as is extended to the existing members of the authority, and if coverage of Albuquerque public schools will not adversely affect the insurance rate of existing members of the authority.

Article IV, Section 16 of the New Mexico Constitution provides: "General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments ... public schools and other expenses required by existing laws." The question is whether this provision in the 1988 General Appropriation Act, allowing APS to participate in the Authority, is contrary to Article IV, Section 16 and thus void.

The purpose of Article IV, Section 16 is "to prevent the passage of general legislation as a part of such [general appropriation] bill, which in no way was connected with ... making provision for the expenses of the government.... Matters which are germane to and naturally and logically connected with the expenditure of the moneys provided in the bill ... may be incorporated therein." State ex rel. Whittier v. Safford, 28 N.M. 531, 534-35, 214 P. 759, 760 (1923) (upholding a general appropriation act's limitation on per diem). See, e.g., National Bldg. v. State Bd. of Educ., 85 N.M. 186, 510 P.2d 510 (1973) (legislative direction to a state agency to relocate its offices is germane to expenditures of appropriated moneys); State ex rel. Holmes v. State Bd. of Finance, 69 N.M. 430, 367 P.2d 925 (1961) (legislature may authorize board of finance to reduce agency operating budgets in appropriation act); State ex rel. Delgado v. Sargent, 18 N.M. 131, 134 P. 218 (1913) (appropriation act measure that provided for certain disposition of Insurance Department monies to continue indefinitely violated Article IV, Section 16, because it provided a permanent policy bearing no relationship to the appropriations made in the act).

The New Mexico Supreme Court recently applied Article IV, Section 16 to uphold a line-item veto of language in the 1988 General Appropriation Act that prohibited a District Attorney from spending $4,000 for parking space: "[T]he legislature has attempted to enact policy which is better addressed by general legislation and is not suitable for inclusion in the general appropriation bill." State ex rel. Coll v. Carruthers, 27 N.M. Bar Bull. 518, 520 (filed August 2, 1988). The Court also upheld the Governor's veto of other language in the act that conflicted with several statutes:

The vetoed language ... would repeal by implication conflicting provisions in the Information Systems Act. Such ... repeal is more appropriately addressed in separate or

general legislation. Article IV, section 16 of the New Mexico Constitution prohibits the inclusion of general legislation in the General Appropriation Act. The General Appropriation Act may not be used ... to nullify general legislation. The legislature is not free to override or repeal general legislation in this fashion.

Id. at 521.

We, as the courts, adhere to the New Mexico Supreme Court's admonition in State ex rel. Whittier v. Safford, supra: "[C]ourts hesitate to declare statutes unconstitutional ... and it is always desired and preferred to give them effect. In doubtful cases their constitutionality is favored, and it is only when they are clearly violative of the Constitution that the courts so construe them." Id. at 534, 214 P. at 760. However, we find that the language in the 1988 General Appropriation Act that allows APS to participate in the Authority clearly violates Article IV, Section 16. That language conflicts with the Public School Insurance Authority Act, which prohibits APS' participation. The Act affords insurance coverage only to "school districts," as defined by Subsection 22-2-6.3(G), and to "educational entities," as defined by Subsection 22-2-6.3(C). APS fits neither definition. The permission that Act gives to "educational entities" to participate excludes, by implication, permission to others. Otherwise, the Legislature's grant of permissive participation to a designated group would have been unnecessary. We must assume that the Legislature does not intend to enact useless statutes. See State ex rel. Bird v. Apodaca, 91 N.M. 279, 284, 573 P.2d 213, 218 (1977); Griego v. Health & Social Services Dep't., 87 N.M. 462, 464, 535 P.2d 1088, 1090 (Ct. App. 1975). Indeed, the 1988 Legislature recognized that its appropriation measure conflicted with general law, because it used the phrase, "notwithstanding Section 22-2-6.3(G)." In effect, the 1988 Legislature, through its appropriation act, has re-written the Public School Insurance Authority Act to amend the "school district" definition in Subsection 22-2-6.3(G) to include APS, and to excuse APS from Subsection 22-2-6.9 (A)'s mandatory participation requirement. This is general legislation and is void. We therefore conclude that APS may not participate in the insurance coverages afforded by the Public School Insurance Authority Act.

**ATTORNEY GENERAL**

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