

Opinion No. 36-1407

July 14, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. H. R. Rodgers, Superintendent of Public Instruction, Santa Fe, New Mexico.

{*130} We have your letter of July 13th asking for an opinion from this office on the following questions:

"1. Is it legal according to our insurance laws for a public school district to insure in a mutual fire insurance company providing for contingent liability equal to and **in addition** to the amount of the annual premium?

2. Does the insuring with Mutuels violate the constitutional provisions prohibiting the State or any political subdivisions thereof from lending, giving credit, or making donations to individuals or subscribing to the capital stock of associations or corporations, where it was not shown that ultimate liability was disproportionate to premiums on other types of policies?"

Both of the questions are related so that our opinion as to one must necessarily control, in some measure, our opinion on the other. As to the first, we find no provision of the statutes which would prohibit a public school district insuring its buildings in a mutual fire insurance company and assuming contingent liability, provided that the limit of the contingent liability is definite by the contract of insurance.

As to your second question, this office wrote an opinion on this question to the Superintendent of Insurance of this State on November 14, 1935, and in that opinion, after discussing various cases decided in other states, held that a public body might insure in a mutual fire insurance company, provided that the contingent liability is limited to a definite amount by the contract of insurance and that such action would not be in violation of Article 9, Section 14 of the New Mexico Constitution. On the other hand, if the contingent liability is unlimited in amount then the said constitutional provision would be violated.

By J. R. MODRALL,

Asst. Atty. General