

Opinion No. 40-3493

March 26, 1940

BY: FILO M. SEDILLO, Attorney General

TO: Mr. George E. McDevitt, City Attorney, Gallup, New Mexico.

{*144} We have given consideration to your recent inquiry as to whether the Town of Gallup may obtain group insurance for its employees. It is my opinion that the cases of Nohl v. Board of Education, 27 N.M. 232, and Bowers v. City of Albuquerque, 27 N.M. 291, have settled this question in the affirmative, in the absence of statutory prohibition; and I know of no statutory prohibition.

In the briefs in the latter case, it was contended that Section 90-402, 1929 Code, which is applicable to towns, gave the city the power to control its finances; that although there was no authority for employment {*145} of officers, the city had that power, and that as an incident of that power it could set the terms and conditions of such employment; that purchase of the insurance was part of the compensation for their employment and, therefore, money expended for public purposes. The decision does not mention Article IX, Section 14, of the Constitution, but the briefs show that it was called to the court's attention, and so I think we can rest assured that such purchase of group insurance does not violate that provision.

By: ANTONIO M. FERNANDEZ,

Asst. Atty. Gen.