

## Opinion No. 41-3976

December 29, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. B. G. Dwyre State Highway Engineer Santa Fe, New Mexico. Attention: Mr. R. L. Ormsbee.

{\*141} By your letter of December 16, 1941, you have requested an opinion of this office as to whether or not a state highway department may legally carry its workmen's compensation insurance in a mutual company, the terms and conditions of the insurance policy being that the insured is subject to assessment in "an amount equal to one times \* \* \* the premium written in the policy which contingent liability shall be in addition to such premium." Under the terms of the policy the state is subject to no other assessment.

Section 14, Article IX, New Mexico Constitution, provides:

**"Neither the state**, nor any county, school district, or municipality, except as otherwise provided in this constitution, **shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation**, or in aid of any private enterprise for the construction of any railroad: provided nothing herein shall be construed to prohibit the state or any county or municipality from making provisions for the care and maintenance of sick and indigent persons."

Our predecessors in office have twice held that school districts and irrigation districts might purchase mutual insurance without violating the constitutional prohibition set out above. At the present time, we do not feel disposed to overrule these opinions of long-standing.

Copies of Opinion No. 1214 dated November 14, 1935, written by Quincy D. Adams, and Opinion No. 1407 dated July 14, 1936, written by J. R. Modrall are enclosed for your information. See in addition to the authorities cited therein, *McMahon v. Cooney*, 25 Pac. (2d) 131, 95 Mont. 138.

In view of the foregoing, it is our opinion that the State Highway may obtain its workmen's compensation insurance in a mutual company so long as the policy of insurance limits the liability of the insured to one times the amount of the premium.