

Opinion No. 43-4286

May 14, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. R. H. Grissom, Educational Budget Auditor, Office of State Comptroller, Santa Fe, New Mexico

In your letter dated May 13, 1943, you refer to Section 10-416 of the 1941 Compilation and inquire whether under this law, County and Municipal Boards of Education can insure their employees, and pay, not to exceed, 20% of the cost of such insurance. You, also, ask whether the insurance authorized under this law must be group insurance, or whether it could be ordinary life or 20 pay life insurance.

Section 10-416 of the 1941 Compilation provides as follows:

"All state departments and institutions and all political subdivisions of the state of New Mexico are hereby authorized to cooperate in providing group or other forms of insurance for the benefit of eligible employees of the respective departments, institutions and subdivisions; provided that the contributions of the state of New Mexico or any of its departments or the political subdivisions of the state shall not exceed twenty per centum (20%) of the cost of such insurance."

It is noted that this Section authorizes all political subdivisions of the State to come under the act. A School District is a political subdivision and if insurance is obtained by the County or Municipal Boards of Education the cost thereof would have to be paid out of the Direct Charge Fund of each School District, in which there might be employees who decide to participate in the insurance, unless there is a cash balance on hand not needed for other purposes in the Maintenance Budget, in which event, the 20% contributed by the School District could be paid from such cash balance in the Maintenance Budget.

You, also, ask whether the form of insurance must be group or whether it could be ordinary life or 20 pay life. The act uses this language "Group or other forms of Insurance." Group insurance may cover life, accident and health insurance, but is recognized by the courts as being a distinct form of insurance in which the employer could pay a part or all of the premium and the contract is one between the insurance company and the employer. The employee and the beneficiary are only incidental parties to the contract and the beneficiary does not acquire any vested interest in the contract. Such a policy may be cancelled at any time by an agreement between the employer and the insurance company with or without the consent of the employee or beneficiary.

Group insurance has been held to be in the nature of term insurance. *Watkins vs. Metropolitan Insurance Company* La. App. 174 So. 885 and *Miller vs. Travelers' Insurance Company* 17 Atl. (2d) 907, 143 Pa. Super. 270.

Since group insurance is a distinct form and constitutes a contract between employer and the insurance company and since the Legislature provided that other forms of insurance may be obtained, the Legislature, undoubtedly, had in mind types of insurance for the benefit of the employee, in which the contract is between the employee and the insurance company, which would be the case in ordinary life or 20 pay life.

For the reasons above stated it is apparent that Governing Boards of Education may use monies in the Direct Charge Fund as provided in the Budget to provide 20% of the premium of group insurance for the employees of respective School Districts or to participate in other forms of insurance for such employees as above outlined. It is to be noted that the law is not compulsory upon anyone and before any form of insurance is obtained for the benefit of employees in the respective School Districts the Governing Board must decide to participate in the insurance program, there must be funds available in the Direct Charge Fund, and the individual employee must decide to participate therein and be willing to pay the 80% of the premium required under the act.

By C. C. McCULLOH,

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