

Opinion No. 44-4557

August 8, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. A. E. Hunt, Business Manager, Eastern New Mexico College, Portales, New Mexico

We have your letter of August 4, 1944, concerning the proposed annuity plan to be entered into between the faculty of the Eastern New Mexico College and Teachers' Insurance and Annuity Association of America. In your letter you call attention to the fact that in my opinion dated July 21, 1944, I assumed that a contract would be entered into between the College and the insurance company. You now ask whether or not it would be legal for the College to pay a portion of the premiums on the policies entered into directly between the insurance company and faculty members.

It is fundamental that a state institution has only such powers as are granted it by the legislature. Without Chapter 210 of the Laws of 1941 as amended by Chapter 51 of the Laws of 1943, the Eastern New Mexico College would have no authority to enter into any contract for annuity policies for its teachers, would have no authority to pay any premiums on policies taken by faculty members, nor could it compel faculty members to enter into an annuity plan. Chapter 210, *Supra*, gives your college the right to do these things. Thus, since the statute is the seat of your authority, it must be complied with.

In view of the foregoing, it is my opinion that Eastern New Mexico College cannot pay premiums on annuity policies of its faculty members unless it built a plan around a contract with an insurance company authorized to do business in New Mexico. It is difficult for me to see how any comprehensive plan could be carried out unless the college entered into a contract with an insurance company. However, there is nothing to prevent individual faculty members from contracting directly with an insurance company for an annuity policy as long as the school does not participate. If this were done, the following should be borne in mind:

- (1) The school could not force the faculty members to take out annuity policies.
- (2) In the event of the refusal of the company to pay a disputed claim, the insured could not bring suit against the insurance company in this state, since he could not get service upon the company.
- (3) If a judgment were obtained, the judgment could not be collected in New Mexico since the company has no assets in this state.
- (4) It would be unlawful under the terms of Section 60-702 of the New Mexico 1941 Compilation for an adjustor of the company to personally adjust or the insured to enter into such an adjustment.

(5) If you, as business manager, assisted in carrying out a plan of obtaining annuity contracts for faculty members, since the school officially would not be participating, it is conceivable that you might be considered as violating Chapter 119 of the Laws of 1943 (Sec. 55-715 of the 1941 Compilation), which prohibits any school official from selling insurance to faculty members.

I appreciate your desire to provide for an annuity plan with this particular company and I find that this company is well recommended by Bests, yet I do not see under all the circumstances how it will be legally possible to do so.

By ROBERT W. WARD,

Asst. Atty. General