

**Opinion No. 53-5843**

October 29, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Floyd Santistevan Assistant Superintendent Department of Education Santa Fe, New Mexico

{\*263} This will acknowledge receipt of your letter of September 10, 1953, in which you ask the opinion of this office upon the question of whether county boards of education, can, at their option, pay the legally prescribed portion of premiums of life, health and accident insurance policies carried in favor of emeritus employees.

§ 10-416, of the 1941 Compilation, provides:

"Group insurance -- Contributions from public funds limited. -- 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."

Further, § 55-1120, of the 1941 Compilation, Pocket Supplement, as amended in 1945, provides:

"Group life or accident insurance not prohibited. -- Nothing contained in this act (55-1114 -- 55-1121) shall prohibit boards of education of any municipality, county or other school district, or boards of regents of said institutions, from carrying group life or accident insurance upon their employees either acting or emeritus."

Nothing in the Teacher's Retirement Act prohibiting such payment, the question to be determined is whether such persons are employees under § 10-416. This office has previously held that such emeritus employees are still employees of the school system and subject to the control of the Board. See Attorney General's Opinion No. 4145. Such being the case, it is our opinion that a school board may, at its option, pay the prescribed percentage of insurance premiums on policies for the benefit of emeritus employees of that board.

By: Walter R. Kegel

Assist. Attorney General