

## **Opinion No. 63-100**

August 13, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Mr. H. F. Allred, Superintendent Roswell City Schools P. O. Box 1437 Roswell, New Mexico

### **QUESTION**

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1. May a local board of education require all school employees to purchase group hospitalization insurance if the local board pays twenty percent (20%) of the employee's premium?
2. If a local Board of Education may require Group Hospitalization membership of its teachers, may this be done even though it is not a part of the contract of employment of the teacher?

#### **CONCLUSIONS**

1. No, such insurance coverage is optional with school employees.
2. See analysis.

### **OPINION**

#### **{\*217} ANALYSIS**

In your first question presented above you inquire whether a local board of education may require school employees to purchase group hospitalization insurance if the local board pays twenty percent (20%) of the insurance premium.

Section 5-4-12, N.M.S.A., 1953 Compilation, provides that all state departments, institutions and political subdivisions of the state are authorized to cooperate in providing group or other forms of insurance for the benefit of eligible employees of such governmental body. This section also specifies that the public employer may lawfully contribute up to a maximum of twenty percent of the total cost of such insurance.

As pointed out in Attorney General's Opinion No. 63-44, dated May 3, 1963, the objective of this Statute was to expressly provide authority for the state, state institutions and political subdivisions of the state to make contributions from public funds to pay a portion of the cost of group insurance policies carried for the benefit of public employees, and to limit the amount of such payment.

Participation in such group insurance programs by public employees, including school employees is optional on the part of the employee. Section 5-4-13, N.M.S.A., 1953 Compilation, permits public employers to deduct from employees' salaries the employees' cost of such insurance. This statutory provision is, however, limited to those employees "who may elect to be covered by group or other insurance."

From a careful reading of the above Statutes we believe it is clear that participation in group insurance programs by school employees is optional with each individual employee and such participation may not be required in the absence of assent by each employee.

{\*218} Our answer to your first question is also dispositive of your second question.

By: Thomas A. Donnelly

Assistant Attorney General