

Opinion No. 64-83

June 16, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Harry Wugalter, Chief, Public School Finance Division, Department of Finance & Administration, Santa Fe, New Mexico

QUESTION

QUESTION

Is it permissible for a school district to pay for students' insurance (of any type) with school district funds other than funds raised through the Student Activity Account?

CONCLUSION

No.

OPINION

ANALYSIS

The answer to the question presented, in our opinion, must be answered in the negative. Article IX, Section 14, of the New Mexico State Constitution provides in part:

"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. . ." (Emphasis supplied).

As stated supra, a school district is prohibited by state constitution from directly or indirectly providing or lending its credit or funds to any person except in instances where value is received therefor.

Section 5-4-12, N.M.S.A., 1953 Compilation, authorizes the state, state institutions and political subdivisions of the state to provide group or other forms of insurance for "the benefit of **eligible employees** of the respective departments, institutions and subdivisions" in an amount not to exceed twenty per cent of the cost of such insurance. Such statute has been interpreted by this office as a valid use of public funds and not to constitute a pledge of credit or donation in contravention of the state constitution, upon the premise that such contribution is in fact an increment to a public employee's salary and is a benefit to the state or its subdivisions through its concomitant effect of attracting and maintaining capable public personnel in public positions. In such

instance, a contribution to a limited maximum is not a lending of credit or a donation but an increase in the remuneration of a public employee for services rendered. See Attorney General's Opinions Nos. 63-44, dated May 3, 1963, 63-100, dated August 13, 1963, and 63-25, dated March 28, 1963.

In the case under consideration however, the payment of insurance premiums for any student insurance, without specification as to amount or extent, would appear to be violative of the above cited constitutional provision, and falls outside the authorization of the legislative enactment stated in Section 5-4-12, supra. Careful examination of the statutes of this state relating to schools indicates no authorization permitting the use of public funds for the payment of student insurance premiums. Section 58-11-16, N.M.S.A., 1953 Compilation, defines "blanket sickness and accident insurance" and recognizes that policies of insurance may be issued: "(3) Under a policy or contract issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or teachers."

Such statutory provision does not however, validate the expenditure of public moneys for such purpose. Where the funds utilized to pay the cost of individual student insurance benefits, whether it be group health, accident, life insurance or insurance of any other character, are derived from public moneys the application of such funds to payment of insurance benefits would be contrary to law.

Student activity funds maintained apart from public funds and derived from private sources or donations, would not be considered public moneys and could however, validly be applied to pay the cost of various types of insurance for individual students attending public schools.