

## Opinion No. 41-3910

October 2, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. J. D. Hannah Chief Assistant State Comptroller Santa Fe, New Mexico

{\*102} I have your letter of the 27th wherein you state that the right of the employees of the State Comptroller to participate in the group insurance plan, as provided for by Chapter 188 of the Laws of 1941, has been questioned. You refer to former attorney general's {\*103} Opinion No. 3836, and request a further interpretation in connection with the group insurance plan. You are particularly interested in ascertaining whether or not, in our opinion, the various state departments may contribute a sum not in excess of 20% of the cost on the premium of the group insurance from their contingent funds, in view of the provisions of Section 10, Chapter 212, Laws of 1941.

In my former opinion I said:

"In addition, I am of the opinion that the provisions of Section 10 of House Bill 313, supra, prohibits any department of the state from contributing out of its contingent fund any sums of money toward any group insurance on any employee or officer whose salary is fixed by a specific appropriation."

There are four classes of employees: (1) those whose salary is fixed as to each by a specific appropriation; (2) those whose combined salary is fixed as to a specific group by a specific appropriation, but not as to each; (3) those where a lump sum is provided for salaries without specifying the group or number of employees, and (4) those where an appropriation is made for salaries and all other purposes by a stated lump sum or amount as for example: Class 1, "for salary of special tax attorney, \$ 3600"; Class 2, "for salary of two stenographers, \$ 3,000"; Class 3, "to apply on salaries and wages, \$ 76,000"; Class 4, "for salaries, wages, travel, and other necessary expenses, an amount equal to 2% of all moneys collected, etc."

Your request for an opinion raises the question as to whether or not some of the above classes of employees do or do not fall within the provisions of Section 10, Chapter 212, Laws of 1941, referred to in that portion of my previous opinion above quoted. It is not necessary to express any opinion on this question at this time for the reason that I have now, after further study, concluded that Section 10 of Chapter 212, Laws of 1941, does not in any way prohibit the payment of group insurance contribution by the state.

It appears to me that it was clearly the intent of the legislature for the state to contribute toward this group insurance plan where employees of a department should desire to take out the insurance if the department head, in his discretion, should so desire to assist such employee or employees by a contribution toward the payment of the costs

on the premium. This intent in the part of the legislature is evidenced by its use of the following words in the said act:

"Provided that the contribution of the State of New Mexico or any of its departments or the political subdivisions of the state shall not exceed 20% of the costs of such insurance."

Section 10, Chapter 212, Laws of 1941, the same being a part of the general appropriation bill, reads in part as follows, to-wit:

"No additional compensation as salary shall be paid out of any fund herein appropriated for Contingent Expense to any State officer, assistant, or employee whose salary is fixed by a specific appropriation herein \* \* \*."

In view of the above provisions of Section 10 of Chapter 212, unless it can be said that the moneys for contribution for group insurance were appropriated in the lump sum salary appropriations or in the contingent expense fund, then we must conclude that no appropriation at all was made anywhere and that Chapter 188 is wholly ineffective. If at all possible, we do not wish to reach this conclusion.

After further careful consideration of the provisions of Section 10 of Chapter 212, Laws of ~~{\*104}~~ 1941, supra, we find that the legislature has in the past, on numerous occasions, placed such a provision in each appropriation act. This action on the part of the legislature was taken long before any law was passed relative to any group insurance plan as is provided for by Chapter 188 of the Laws of 1941. In view of this fact, I am now convinced that when the legislature enacted Section 10, Chapter 212 of the Laws of 1941, that it did not intend payments on group insurance policies to be included within the prohibitions therein recited. In connection with this, it will be observed that most of the salaries fixed as to each individual employee by specific appropriation in the appropriation act remain the same as they were prior to the passage of Chapter 188.

This, to my mind, indicates that the legislature did not take into consideration in fixing those amounts, payments for group insurance. It is for such unforeseen contingencies that appropriation is made for contingent expenses. when the appropriation bill was passed, payment of group insurance premiums were contingent upon the approval of the group insurance law by the Governor, and further contingent upon the election of the various employees to take the insurance so provided for by Chapter 188.

As pointed out in former Opinion No. 3836, however, there is nothing embodied within Chapter 188 making it mandatory on any department to pay any sum whatsoever, but to the contrary, Chapter 188 merely places a limit on the contribution which **may** be made by any state department, and this in the department head's discretion.

If the head of any department should not see fit to contribute out of his contingent fund in part payment of any insurance premium as limited by Chapter 188, I can see nothing

in the law which would prohibit an employee, or for that matter, an officer, from taking a voluntary reduction in salary equal to 20% of the cost of the insurance premium, and then pay the 80% additional out of the wages or salary actually received by such employee or officer.

This opinion in no way changes our former ruling with respect to elective officers or civil officers who have a fixed and definite term of office and whose compensation may not be increased or diminished during their term of office.

In view of the foregoing review, Opinion No. 3836 is now amended to this extent:

(1) Not to exceed 20% of the costs of any group insurance premium may be paid by the department head on any employee out of the contingent fund or salary fund, where available, in the department head's discretion, except elective officers and other civil officers who were in office and had a fixed and definite term of office at the time Chapter 188 of the Laws of 1941 became effective.

(2) Any elective official or other civil officer with a definite term of office may voluntarily take a reduction in his present salary equal to 20% of the costs of any group insurance premium, and pay the other 80% of the premium out of the salary or wages actually received without violating any statute in the State of New Mexico.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General