

## Opinion No. 42-4036

February 28, 1942

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

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*166} In your letter dated February 26, 1942, you request an opinion relative to Chapter 188, Laws of 1941, and enclose a letter to you from R. H. Grissom, Educational Budget Auditor, which letter submits the following questions:

"80% of the money for the school Maintenance now comes from the state, and 20% comes from property tax within the County. Would this mean that the school teachers could be classified as State employees, and participate in this insurance? Is there any legal way by which we could write one policy for all the teachers in the State, and pay for the same out of any State or school funds?"

State officers are those whose duties concern the state at large or the general public, both exercised within defined limits. Their official duties and functions are coextensive with state boundaries. {\*167} Volume 40, Words and Phrases, Page 48.

The same general rule would apply in defining state employees and under such definition a school teacher who is employed by the respective local, county or municipal boards of education would be an employee of the school board or school district, and not a state employee.

Under Chapter 188, Laws of 1941, political subdivisions of the State of New Mexico, as well as state departments and institutions, are authorized to cooperate in providing group insurance for the benefit of eligible employees of the respective political subdivisions. However, the employee under Section 2 of said act must elect to come under the group insurance plan and the governing officials or department heads also have discretion in deciding whether payment of the 20% of the premium shall be made by such governing body or department head.

The State Department of Education does not have jurisdiction over the expenditure of funds distributed under the State Public School Equalization Act, but said funds become the property of the local political subdivision and may be expended only under the jurisdiction of the respective boards of education of the local districts. Section 404. Chapter 73, Laws of 1935, provides that all sums remaining in the emergency school fund shall, by the State Treasurer, be covered into the State Public School Equalization Fund.

Section 6, Chapter 125, Laws of 1941, after making certain provisions for transportation, etc., provides that all other monies available in the State Public School Equalization Fund, and not otherwise appropriated, shall be distributed to the several counties for

school maintenance purposes. Under Section 1, Chapter 121, Laws of 1941, it is provided that the maintenance budget shall not include, either directly or indirectly, any items of expense for \* \* \* group insurance.

From reading the above mentioned sections of the law, it is apparent that the cost of premiums on group insurance for school teachers could only be paid out of the direct charge budget and for that reason would be met by property taxes collected for the respective school districts and would not come from the State Public School Equalization Fund. The State Department of Education could not, therefore, write one policy of insurance covering all teachers in the state and pay for the same out of any of the state or school funds.

By C. C. McCULLOH,

Asst. Atty. General