

Opinion No. 44-4585

September 23, 1944

BY: C. C. McCULLOH, Attorney General

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

We are in receipt of your letter of September 20, 1944, and the enclosed insurance policy. The policy is one which the City schools of Carlsbad wish to obtain for teachers in their schools. Under this policy, the City schools would pay 20% of the premium.

In examining the policy, I find that it contains a rider by which the coverage is extended to insure the wife and children of the teacher at a premium of \$ 1.50 and 60c respectively. In view of this situation, you ask our opinion as to whether the City schools may legally pay 20% of the premiums on such a policy where a portion of the premium extends the policy to insure the dependents of the school teachers.

The answer to your question will depend upon the construction of Sections 10-416 and 10-417 of the N.M. 1941 Compilation, which are as follows:

"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."

"Said departments and institutions and all political subdivisions of the State shall be authorized to deduct from said employees' salaries, **who may elect to be covered** by group or other insurance under this act (Secs. 10-416 -- 10-418), for the payment of premiums on said policies of insurance."

A school district is, of course, a political subdivision of the State of New Mexico, so that school districts are covered by its provisions. The contention of the Carlsbad Municipal Schools must necessarily be that so long as a teacher is benefited by the policy, there is authority in the school district to contribute to such a policy, since the only limitation contained in Section 10-416 is that it be "for the benefit of eligible employees."

I cannot agree with this contention. While it is true that a teacher would benefit by having his dependents insured against accident or sickness, yet such a benefit is indirect, and could not have been contemplated by the Legislature. It appears obvious that the Legislature, when it used the word "benefit," meant by that word insurance coverage. This construction is borne out by the underlined portion of Section 10-417, which provides that the departments may deduct from employees' salaries "who may elect to be covered by group or other insurance."

Further, it occurs to the writer that if Section 10-416 were construed to permit a political subdivision to contribute to the premiums on a policy which indirectly benefitted the employee, then the employee could cause to be insured anyone he had an insurable interest in, such as an employee in a private business, or even fire insurance on his personal property. Such a construction would very likely render the act unconstitutional under Article 9, Section 14 of the New Mexico Constitution.

In view of the foregoing, it is my opinion that the City schools of Carlsbad cannot contribute to such a policy under which the school would contribute to the premium covering the dependents of the teachers.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General