**Opinion No. 19**

**LABOR: Medical insurance, may contract for—WORKMEN'S COMPENSATION: Hospital contracts—Section 92-610, Revised Codes of Montana, 1947**

**Held: Employees or their bargaining representative may be parties to a hospital contract under Section 92-610, RCM, 1947.**

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August 6, 1959

Mr. W. W. Casper, Secretary
State Industrial Accident Board
Capitol Building
Helena, Montana

Dear Mr. Casper:

You have asked whether a three party hospital contract to furnish medical and hospital benefits under the Workmen's Compensation Act is permitted by the act. You state in your request for my opinion that the bargaining agency for the employees has proposed a hospital contract to be entered into by the employer, the employees, and the hospital, but that the employer resists the proposal on the grounds that a contract with the employees as parties is illegal.

Since any contract to provide hospital benefits must be filed with your board and be approved by your board an opinion now on this point might assist the parties concerned in determining upon a contract and your board in granting or denying approval of the contract.

The fact that there would be more than two parties to the hospital contract in itself would not invalidate it. Contracts are often entered

into with more than two parties. Section 13-102, RCM, 1947, provides that every contract shall have "parties capable of contracting." The text writers state "A contract requires two or more parties." (12 Am. Jur. Contracts, Section 16). "There must be at least two parties in a contract but may be any greater number." (American Law Institute, Contracts, Section 15). "Any number of persons may promise a certain performance to one or to any number of persons in return for acts or return promises and all may be part of the same transactions." (Ibid.)

Thus under general contract law employees could be parties or their authorized bargaining agency could be a party to a hospital contract under the Workmen's Compensation Act.

Turning then to the Workmen's Compensation Act itself does it prohibit the employee from being a party to a hospital contract provided for under the act?

The only provision dealing with this subject is Section 92-610, RCM, 1947, which reads:

> "Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of Section 92-706, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.
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> "Such hospital contract or agreements must provide for medical, hospital and surgical attendance for such employee for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.
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> "No assessment of employees for such hospital contracts or benefits shall exceed one dollar ($1.00) per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose, that the actual cost of such service exceeds the said sum of one dollar ($1.00) per month, and any such finding of the board may be modified at any time when justified by a change of conditions, or otherwise, either upon the board's own motion, or the application of any party in interest.
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> "No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this act to provide that where hospitals are maintained by employers, such hospitals shall be no more than self-supporting from assessments of employees, and that where hospitals are maintained by other than the employer, all sums derived by assessment of employees shall be paid in full to such hospital without deduction by the employer. All contracts provided for herein shall be subject to the provisions of Section 92-706, in so far as the same relates to cases of inadequate medical and hospital facilities.

"Whenever, in the opinion of the board, it is necessary for an employee to have specialized medical and hospital service not furnished by the contracting hospital service not furnished by the contracting hospital or physician the industrial accident board is authorized to direct that such specialized medical and hospital treatment be given, and to pay for the same with a properly drawn warrant on the industrial accident fund, not exceeding the sum of three hundred dollars ($300.00), where the workman is under plan three and the insurance carrier under plans one and two, provided, however, that this section shall apply only in cases where the average number of employees paying a monthly fee on the hospital and medical contract is less than two hundred and fifty employees.

"All contracts mentioned herein shall be filed with the board, which shall have full power to approve or disapprove any such contract, and no payment shall be legally collectable under any such contract or incidental thereto until approval thereof by the board."

Several Montana cases have involved hospital contracts executed under this section, but in none of them has your inquiry been in issue, so the cases offer little assistance and no precedent in answering your question. One case, Murray Hospital v. Angrove (92 Mont. 101, 10 Pac. 2d 577) does indirectly acknowledge that both the employer and employee may contract with a hospital to furnish the benefits provided for by Section 93-610 (then 2907). The case states:

"However, by Section 2907, Revised Codes of 1921 (now amended by Section 1, Chapter 177, Laws of 1929) the employers and employees are permitted to waive the provisions of Section 2917 above and to enter into a 'mutual contract or agreement **with a hospital;**' " (Emphasis added.)

The section does not appear to limit the parties nor does it appear that such was its purpose. The general subject of the section is the authorization of hospital contracts or agreements providing medical, hospital and surgical benefits for employees.

The section deals with the effect of such agreements, the provisions of the agreements, the assessment limit on the employee for such hospital contracts, a prohibition of profit making from the agreement by the employer, provisions for specialized medical care, and approval by the board.

What the section looks to is an enforceable agreement insuring the employee medical benefits. That objective is not jeopardized by allowing the employee to be a party to the agreement. Indeed the objective would seem to be strengthened by his participation.

This section contemplates that contracts reached under it will affect employers, employees, and hospitals unless the employer main-

tains his own hospital. Performance from each of these groups is required. That being so it is reasonable that a single instrument reciting the requirements from each to the transaction be executed and that each performer be a party. Since the Industrial Accident Board must approve whatever agreement is reached there is a further assurance that the employees' interests will be safe guarded.

This construction, I blieve to be in furtherance of this familiar rule reiterated in McCoy v. Mike Horse Mining Co., 125 Mont. 435, 252 Pac. 2d 1036.

> "A liberal construction of the Compensation Act is commanded in order that the humane purposes of the legislation shall not be defeated by narrow and technical construction, and the intention of such requirement is for the benefit and protection of the injured workman and his beneficiaries."

For these reasons it is my opinion that employees or their bargaining representative may be parties to a hospital contract under Section 92-610, RCM, 1947.

Very truly yours,
FORREST H. ANDERSON
Attorney General