

VOLUME 32

Opinion No. 5

INSURANCE: Group insurance, state employees—OFFICES AND OFFICERS; State officers, group insurance—STATE; Employees, Group Insurance—Section 11-1024, R.C.M. 1947, as amended by Chapter 200, Laws of 1967.

- HELD:**
1. Employees of county welfare departments are not employees of the state welfare department for the purpose of group health insurance under Section 11-1024, R.C.M. 1947.
 2. The state board of public welfare has the discretion to pay less than the maximum contribution authorized for employee group insurance and may refuse to make any such payments.
 3. Employer's payments of group insurance premiums are not deducted from the participating employees' pay and non-participating employees are not entitled to a pay increase equivalent to the cost of the employer's premium payment for participating employees.

June 15, 1967

Mr. Thomas H. Mahan
Special Assistant Attorney General
Department of Public Welfare
P. O. Box 1723
Helena, Montana 59601

Dear Mr. Mahan:

You have requested my opinion on the following questions concerning the interpretation of section 11-1024, R.C.M. 1947, as amended by Chapter 200, Laws of 1967.

1. Must two-thirds of the employees of the state and county welfare departments vote in favor of the adoption of a health and accident insurance plan before one can be adopted by the welfare department?

2. Does the state welfare board have any discretion as to whether such a plan shall be adopted or not?

3. If a plan were adopted and some members of the department did not wish to participate in the insurance program, would they be entitled to an increase in pay in the amount of seven dollars and fifty cents per month?

Chapter 200, Laws of 1967, amended section 11-1024, R.C.M. 1947, to read as follows:

11-1024. Group insurance for **all departments, bureaus, boards, commissions and agencies of the state of Montana**, county, city and town officers and employees — authority — approval of employees—limit on contributions. All **departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities, and towns** are hereby authorized upon approval by two-thirds (2/3) vote of the officers and employees of **each such department, bureau, board, commission, agency, county, city or town**, to enter into group hospitalization, medical health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees, and their dependents, and the respective **administrative and governing bodies** are authorized to pay as part of the officers and employees salary one-half (1/2) of the total premium therefor, provided, however, that such payment shall not exceed seven dollars and fifty cents (\$7.50) per month for each officer and employee, **and further provided that any such premiums shall not be line itemed as group insurance premiums in any budgets for any State of Montana departments or their sub-divisions, and all premiums necessary to pay the cost of such group insurance programs as herein allowed shall be negotiated with the employees or their representatives, and when approved, the total cost necessary to fund such program, within the \$7.50 recommendation, shall be taken from any salaries or salary raises of those employees to be covered and as provided for in any budget for any year of any biennium.** (New material is bold face.)

This office held, in 27 Opinions of Attorney General 70 (Op. No. 32), that county welfare department employees are county employees for the purpose of group health insurance authorized by section 11-1024, R.C.M. 1947. Therefore, approval of two-thirds of the state employees of the welfare department is all that is required for adoption of the insurance program for the state level employees of the welfare department.

Section 11-1024, as amended, "authorizes" state departments, under specified conditions, to pay not to exceed a certain amount for

their employees' group insurance. **Webster's Third New International Dictionary of the English Language Unabridged (1961)** states:

AUTHORIZE indicates endowing formally with a power or right to act, usu. with discretionary privileges.

Further indication of the legislative intent that payment of part of the group insurance premium by the state department is discretionary with the department is contained in the added proviso which states that the department's premium contribution "shall be negotiated" and shall be paid from the moneys appropriated for salaries. Therefore, it is my opinion that the state welfare board has the discretion to pay less than the authorized \$7.50 per month and, in fact, has the right to refuse to make any premium payments at all. It is completely within the discretion of the board.

Your next question is raised by the confusing language of the proviso clause added to section 11-1024 by the 1967 legislature. That proviso reads:

. . . and further provided that any such premiums shall not be line itemed as group insurance premiums in any budgets for any State of Montana departments or their sub-divisions, and all premiums necessary to pay the cost of such group insurance programs as herein allowed shall be negotiated with the employees or their representatives, and when approved, the total cost necessary to fund such program, within the \$7.50 recommendation, shall be taken from any salaries or salary raises of those employees to be covered and as provided for in any budget for any year of any biennium.

If this provision is construed as entitling those employees not participating in the group insurance program to a raise in salary equivalent to the state insurance payment, then this enactment adds nothing to section 40-3905.1, R.C.M. 1947, enacted in 1963, which provides:

All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds (2/3) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiatees in the field of health, or the services of hospitals, clinics or sanitoriums, or both professional and hospital services, shall be

construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

It is this 1963 legislation which authorized payroll deductions for the purpose of paying group insurance premiums. The legislature is presumed not to do useless acts. **State ex rel. Federal Land Bank v. Hayes**, 86 Mont. 58, 282 Pac. 32 (1929) 82 C.J.S. **Statutes** §316, p. 547. In ascertaining the Legislature's intention in enacting Chapter 200, Laws of 1967, it is proper to consider section 40-3905.1, set out above. **Putnam v. Putnam**, 86 Mont. 135, 282 Pac. 855 (1929).

We also have the advantage of a long standing executive construction of this statute by counties, cities and towns, whose employees have received its benefits since 1957. To my knowledge none of these agencies have held that an employee who did not enroll in a group insurance program were entitled to receive the cost of their employer's share of the premium as an addition to their salary. The practical interpretation of a statute by the executive departments charged with its administration is strong evidence of its true meaning. **Miller Insurance Agency v. Porter**, 93 Mont. 567, 20 P. 2d 643 (1933).

Thus it is apparent that the directions contained in the proviso to Chapter 200 are simply a statement that payment of such premiums by a state department must be made from available funds in the department's appropriation for salaries, the "personal services account" established for most departmental appropriations by the last legislature. Such payment, if made, are not deducted from the participating employees' pay and non-participating employees are not entitled to pay increases equivalent to the cost of the employer's premium payment for participating employees.

Very truly yours,

FORREST H. ANDERSON
Attorney General

FHA:DAG:vw