

VOLUME NO. 33

Opinion No. 14

GROUP INSURANCE FOR COUNTY OFFICERS AND EMPLOYEES - extent to which county may participate in payment of premiums. Section 11-1024, R.C.M. 1947.

HELD: The board of county commissioners does not have the discretionary power to pay in excess of the statutorily prescribed \$7.50 per month toward the premiums of group insurance entered into for each county officer and employee pursuant to section 11-1024, R.C.M. 1947.

December 16, 1969

John A. Dowdall, State Examiner
Office of the State Examiner
Sam W. Mitchell Building
Helena, Montana 59601

Dear Mr. Dowdall:

I am in receipt of your letter of November 14, 1969 in which you request my opinion on the following question:

“Does Section 11-1024, R.C.M. 1947, grant a Board of County Commissioners the discretionary power to budget for and pay in excess of \$7.50 per month toward the premiums of group life insurance contracts entered into by county officers and employees subsequent to their majority vote?”

Section 11-1024, Revised Codes of Montana, 1947, as amended by Chapter 220, Laws of 1969, provides as follows:

“All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities, and towns shall upon approval by two-thirds ($\frac{2}{3}$) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and 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 pay as part of the officers and employees salary seven dollars and fifty cents (\$7.50) per month for each officer and employee.”

Section 1, Chapter 220, Laws of Montana, 1969, amended this section by making the group insurance program mandatory for state, city and town officers and employees who elect to come under said program. As section 11-1024, R.C.M. 1947, applies to county officers and employees, the governing body of the county, the board of county commissioners, must “. . . pay as part of the officers and employees salary seven dollars and fifty cents (\$7.50) per month for each officer and employee”, toward a group insurance program which is approved by two-thirds ($\frac{2}{3}$) of the officers and employees of said county. There is no discretion allowed the commissioners under section 11-1024, R.C.M. 1947, as to the amount paid toward the insurance program. It is a well-settled rule of administrative law that a public agency or board has the power to do only what is expressly granted to it by law. See **State v. State Board of Equalization**, 133 Mont. 8, 319 P.2d 221 (1957).

The same general rule has been applied to boards of county commissioners by the Supreme Court of Montana. In a very recent case decided by the Montana court, **Zderick v. Silver Bow County**, No. 11638, decided on October 31, 1969, the court cited and quoted from **Lewis v. Petroleum County**, 92 Mont. 563, 17 P.2d 60 (1932), at page 565:

“The principle is well established that the board of county commissioners may exercise only such powers as are expressly conferred upon it or which are necessarily implied from those expressed, and that where there is a reasonable doubt as to the existence of a particular power in the board of county commissioners, it must be resolved against the board, and the power denied.” (Citation of authority.)

It is clear that the legislature has established the amount of the county's contribution toward the group insurance program at \$7.50 per month for each employee and officer. A contribution of the county at a higher rate is prohibited as being contrary to section 11-1024, R.C.M. 1947. In **Carbon County v. Draper**, 84 Mont. 413, 276 Pac. 667 (1929) the Montana Supreme Court considered a similar situation in which the Board of County Commissioners authorized and approved claims against the county in excess of the rates provided by law. In that case, the court said at page 420:

“The statute having fixed the minimum rate, by fair implication prohibits the payment of anything in excess of that allowance. Any payments made at a higher rate than those fixed by law, to the extent of the excess, were upon claims not ‘legally chargeable against the county,’ and were made ‘without authority of law’.” (Citation of authority.)

See also **City of Roundup v. Liebetrau**, 134 Mont. 114, 327 P.2d 810 (1958).

Therefore, it is my opinion that the board of county commissioners does not have the discretionary power to pay in excess of the statutorily prescribed \$7.50 per month toward the premiums of group insurance contracts for each county officer and employee entered into pursuant to section 11-1024, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL
Attorney General