

VOLUME NO. 37

OPINION NO. 54

PUBLIC EMPLOYEES - Contribution by employer to insurance plans; INSURANCE - Contribution by public employer to insurance plans; INSURANCE - Group insurance for public employees and officers; INSURANCE - Contribution by public employer must be to group plan; REVISED CODES OF MONTANA, 1947 - Section 11-1024.

HELD: Under section 11-1024, R.C.M. 1947, a city may not contribute to individual employees' insurance plans, but must contribute to a city group insurance plan.

18 August 1977

David V. Gliko, Esq.  
Great Falls City Attorney  
City of Great Falls  
P.O. Box 1609  
Great Falls, Montana 59401

Dear Mr. Gliko:

You have asked for my opinion on the following question:

Under section 11-1024, R.C.M. 1947, may a city contribute to whatever insurance plan each individual employee chooses or must the city contribute to a city group insurance plan?

Section 11-1024, as amended during the 1977 session of the Montana Legislature, states in pertinent part:

11-1024. Group insurance for public employees and officers. (1) All...cities...shall upon approval by two-thirds vote of the officers and employees of each such...city..., enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependants.

(2)(a) The respective administrative and governing bodies shall contribute the amount specified in this section towards the insurance premium..... For employees of...local government units, the employer's premium contributions may exceed but shall not be less than \$10 per month.

Cities are thus authorized to contribute to group insurance contracts which they must enter into upon approval by two-thirds vote of their officers and employees. No authorization is given cities to contribute to individual insurance contracts entered into by the employees themselves. The plain meaning of the words of the statute control its interpretation here, where the words are unambiguous, direct and certain. Security Bank and Trust Co. v. Connors, \_\_\_ Mont. \_\_\_, 550 P.2d 1313 (1976).

"Group insurance," to which the statute refers, plainly does not encompass "whatever insurance plan each individual employee chooses." "Group disability insurance" has been

defined by the Montana Legislature as that form of disability insurance covering groups of persons under policies issued to employers, associations, or trustees of funds established by employers or associations, who are deemed the policyholders, insuring employees or members for the benefit of persons other than the policyholders. Section 40-4101, R.C.M. 1947. The laws of the State governing "group life insurance" allow such policies to be issued to employers, labor unions, trustees of funds established by employers or labor unions, public employers including cities, creditors, or credit unions. Sections 40-3901 - 3907, R.C.M. 1947. No provision is made for issuing a "group insurance" policy to an individual employee.

The argument that the Legislature, in enacting section 11-1024, intended to provide compensation for public employees which they are entitled to use as they wish is without merit. In 32 OP. ATT'Y GEN. NO. 5 (1967), it was held that, under this section "non-participating employees are not entitled to pay increases equivalent to the cost of the employer's premium payment for participating employees." The Legislature has adopted this construction by re-enacting section 11-1024 without expressly refuting that interpretation. E.g., Laws of Montana (1969), ch. 220. See Vantura v. Montana Liquor Control Board, 113 Mont. 265, 124 P.2d 569 (1942). In the same chapter as its most recent re-enactment, the Legislature also enacted section 59-919, Laws of Montana (1977), ch. 563, sec. 5, which makes clear that state employees who elect not to be covered by a state health insurance plan will not receive as wages the state contribution for health insurance as determined by section 11-1024. This provision, read together with section 11-1024, indicates the Legislature's general intent that the employer's contributions in section 11-1024 are benefits conditional upon an employee's participation in a group insurance plan. See Belote v. Bakken, 139 Mont. 43, 359 P.2d 372 (1961).

THEREFORE, IT IS MY OPINION:

Under section 11-1024, R.C.M. 1947, a city may not contribute to individual employees' insurance plans, but must contribute to a city group insurance plan.

Very truly yours,

MIKE GREELY  
Attorney General