

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 56

INSURANCE - Funding of employee health and disability insurance premiums;
SCHOOL DISTRICTS - Funding of employee health and disability insurance premiums;
TAXATION AND REVENUE - Authority to exceed maximum levy for insurance not applicable to employee benefits;
MONTANA CODE ANNOTATED - Sections 2-9-101 to 2-9-318, 2-18-702;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 109 (1978).

HELD: The annual property tax allowed under section 2-9-212, MCA, may not be used to fund health and disability insurance premiums for school district employees.

25 March 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked for my opinion on the following question:

May a school district fund health and disability insurance premiums for its employees under section 2-9-212, MCA?

Section 2-9-212, MCA, states:

Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose. [Emphasis added.]

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The term "as herein authorized" refers to authorization contained in the Montana Comprehensive State Insurance Plan and Tort Claims Act, 1973 Mont. Laws, ch. 380, now codified at §§ 2-9-101 to 318, MCA. See 37 Op. Att'y Gen. No. 109, at 471, 473 (1978).

That Act provides that "[a]ll political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part." § 2-9-211(1), MCA. The insurance plans authorized for political subdivisions are analogous to the Act's comprehensive state insurance plan. See 37 Op. Att'y Gen. No. 109 at 474. Provisions concerning that plan refer specifically to "insurance purchased for protection of the state," § 2-9-201(1), MCA, to "a comprehensive insurance plan for the state providing insurance coverage to the state," and to "property, casualty, liability, crime, fidelity, and any...other policies of insurance..." § 2-9-201(2), MCA. Both the State and political subdivisions are authorized to use deductible or self-insurance plans. §§ 2-9-202 and 211, MCA. In light of these provisions, it is apparent that the insurance authorized by the Act is insurance for the political subdivision itself, not insurance provided its employees as a negotiated benefit. See Hostetter v. Inland Development Corp., 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977).

This conclusion is buttressed by the fact that authorization for insurance as an employment benefit is contained in a statute unrelated to the Montana Comprehensive Insurance Plan and Tort Claims Act, § 2-18-702, MCA. Clearly, such employee insurance does not fall within the category of "insurance...as herein authorized," which may be funded under section 2-9-212, MCA.

Volume 37 Op. Att'y Gen. No. 109 does not hold to the contrary. That opinion must be read in the context of the question presented in it: whether the tax permitted under section 2-9-212, MCA, may be used to fund property insurance for a school district as well as liability insurance for the district. Within that context, it is clear that the term "all policies of insurance" in the holding refers only to insurance for the subdivision, purchased for the protection of the subdivision. The term does not refer to insurance for employees, purchased as an employment benefit.

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THEREFORE, IT IS MY OPINION:

The annual property tax allowed under section 2-9-212, MCA, may not be used to fund health and disability insurance premiums for school district employees.

Very truly yours,

MIKE GREELY
Attorney General