

CONTRACTS - Competitive bidding not required for purchasing health insurance for school district employees;

SCHOOL DISTRICTS - Approval by school district employees required for purchase of health insurance;

SCHOOL DISTRICTS - Group health insurance for employees;

MONTANA CODE ANNOTATED - Sections 2-18-702(1), 18-4-123(19), 18-4-124, 20-9-204(3).

- HELD: 1. A school district is not required by section 20-9-204(3), MCA, to let bids on employer provided employee health insurance plans.
2. Insurance purchased by a school district is not a school supply for purposes of section 20-9-204(3), MCA.

8 March 1984

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following questions:

1. Is a school district required under section 20-9-204(3), MCA, to let bids on employer provided employee health insurance plans?
2. Is insurance purchased by a school district a school supply for purposes of section 20-9-204(3), MCA?

Section 20-9-204(3), MCA, provides:

Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$7,500, the work done or the purchase made

shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void. [Emphasis added.]

The Legislature did not provide a definition for the term "supplies" in this statute, nor did it specifically include employee health insurance in the enumerated items that must be acquired through competitive bidding. The rules of statutory construction and existing case law lead me to conclude that employee health insurance plans are not "supplies" within the meaning of section 20-9-204(3), MCA, and the school district is not required to obtain the insurance through competitive bidding.

When the language of a statute is clear and unambiguous, no further construction may be employed to determine its meaning. State v. Weese, 37 St. Rptr. 1620, 616 P.2d 371 (1980). The term "supplies" is broad and unspecific. Thus, it is appropriate to apply rules of statutory construction.

Section 20-9-204(3), MCA, which was first enacted in 1971, has never been judicially interpreted with respect to the scope of the term "supplies." This statute's predecessors required competitive bidding for "any contract for building, furnishing, repairing, or other work for the benefit of the district," but did not require such bidding for "purchasing of supplies." See § 1016, R.C.M. 1935; 1913 Mont. Laws, ch. 76, § 509. In 1933 the Montana Supreme Court had occasion to interpret the scope of the term "supplies" within the context of a general state procurement statute. In Miller Insurance Agency v. Porter, 93 Mont. 567, 20 P.2d 643 (1933), the Court ruled that section 256, R.C.M. 1921, which required competitive bidding for a variety of things including "supplies," did not govern the purchase of fire insurance policies. The Court's interpretation was based on the ambiguity existing in the term "supplies,"

and the practical application of the statute. It also considered the fact that for years the state board of examiners had interpreted the statute to exclude fire insurance and had been obtaining fire insurance without competitive bidding; the Court noted the sanction of the Legislature to such interpretation by reason of its inaction. Id. at 646.

The statute presently in question is similar to the one addressed in Miller Insurance Agency, supra, since it concerns purchasing items through competitive bidding, and presents an ambiguity with the term "supplies." Applying the reasoning of the Court in Miller Insurance Agency, I reach a similar conclusion with section 20-9-204(3), MCA. The rules of statutory construction require that statutes pertaining to the same subject be read together to give effect to them all whenever possible. State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 525 P.2d 564 (1974). The compulsory bidding provisions in this statute must therefore be considered with the statutes pertaining to health insurance for school district employees. Section 2-18-702, MCA, states in pertinent part:

(1) All ... school districts ... shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health ... contracts or plans for the benefit of their ... employees and their dependents. [Emphasis added.]

This statute requires a procedure not contemplated or provided for in the competitive bidding procedure, which requires that "the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids." (Emphasis added.) § 20-9-204(4), MCA. No allowance exists for the employees to approve or reject the bids. This statutory conflict evidences legislative intent that purchase of health insurance not be governed by the competitive bidding requirements.

The required approval of a health insurance plan by the school district employees is a primary reason that the majority of school districts in Montana have interpreted section 20-9-204(3), MCA, not to include employee health insurance plans. The inconsistencies of these two

statutes render compliance with both statutes impractical if not impossible. Furthermore, the interpretation given by the school districts must be given great deference, especially in light of legislative inaction to specifically include health insurance in the competitive bidding statute. Miller Insurance Agency, supra; Assiniboine and Sioux Tribes v. Nordwick, 378 F.2d 426 (9th Cir.), cert. denied, 389 U.S. 1046 (1967).

I conclude that section 20-9-204(3), MCA, does not require competitive bidding for the purchase of employee health insurance plans. In the absence of a statutory requirement to do so, the school district is not required to purchase the health insurance plans through competitive bidding. Missoula County Free High School v. Smith, 91 Mont. 419, 8 P.2d 800, 802 (1932).

THEREFORE, IT IS MY OPINION:

1. A school district is not required by section 20-9-204(3), MCA, to let bids on employer provided employee health insurance plans.
2. Insurance purchased by a school district is not a school supply for purposes of section 20-9-204(3), MCA.

Very truly yours,

MIKE GREELY
Attorney General