

VOLUME NO. 40

OPINION NO. 52

COUNTY ATTORNEYS - Not eligible to participate in state group health insurance plan;

COUNTY OFFICERS AND EMPLOYEES - County attorney is an elected county official;

INSURANCE - County attorneys not eligible for state group health insurance plan;

MONTANA CODE ANNOTATED - Title 2, chapter 15; Title 2, chapter 18, parts 7, 8; sections 2-18-601, 2-18-701, 2-18-702(2), 2-18-712(1), 2-18-809(3), 2-18-809(4), 7-4-2203(1)(a), 7-4-2502(2)(a), 7-4-2701 to 7-4-2717;

MONTANA CONSTITUTION - Article VI, section 1;

OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No. 32 (1975);

REVISED CODES OF MONTANA, 1947 - Section 11-1024.

HELD: County attorneys are not eligible to participate in the State of Montana group health insurance plan.

11 May 1984

Nick Murnion
Garfield County Attorney
P.O. Box 33
Jordan MT 59337

Dear Mr. Murnion:

You requested an opinion concerning:

Whether county attorneys are eligible for the
State of Montana group health insurance plan.

This plan is set forth in part 8 of Title 2, chapter 18, MCA, entitled "State Group Insurance." Part 8 authorizes the State to establish a program to provide group health insurance to "officers and employees of the state." § 2-18-809(4), MCA. The question is whether county attorneys are "officers" or "employees" of the state for purposes of part 8. "State employee" as defined in part 8 expressly excludes county and local government employees. § 2-18-809(3), MCA. Part 8 does not define state "officer."

Part 7 of Title 2, chapter 18, entitled "Group Insurance Generally," addresses group insurance for all public employees and officers. Section 2-18-702(2), MCA, provides:

State employees and elected officials, as defined in 2-18-701, may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

Section 2-18-701, MCA, defines officers and employees of state government:

Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee defined in 2-18-601;

(2) a part-time permanent employee, as defined in 2-18-601, who is scheduled to work a regular schedule of 20 hours or more a week;

....

(4) elected officials. [Emphasis added.]

County attorneys do not come under subsections (1) and (2) of this statute because section 2-18-601, MCA, expressly excludes elected officials from the definition of "employee." Moreover, county attorneys are not "scheduled to work a regular schedule of 20 hours or more a week" for the state, as "part-time permanent employees" under subsection (2). It is my opinion that county attorneys do not come under subsection (4) because they are elected county officials, not state officials.

Furthermore, "elected officials" in subsection (4) could not reasonably be construed to include county and local officials because subsection (1) expressly excludes those officials. Such construction would make subsection (1) meaningless. If there is doubt about the meaning of a phrase in a statute, the statute is to be considered in its entirety and the phrase must be given a reasonable construction which will enable it to be harmonized with the entire statute. McClanathan v. Smith, 186 Mont. 56, 606 P.2d 507 (1980).

A county attorney is defined by statute as a county officer. § 7-4-2203(1)(a), MCA. State officers are specifically designated in the Montana Constitution and the statutes. See, e.g., Mont. Const. art VI, § 1; Tit. 2, ch. 15, MCA. The county attorney is not included as a state officer. County attorneys are elected on a county-wide basis, and their legal responsibilities are restricted to the confines of their individual counties. The amount of a county attorney's salary depends on the population of his county. §§ 7-4-2701 to 2717, MCA.

I recognize that the county attorney's salary is paid by the state and the county. § 7-4-2502(2)(a), MCA. The sharing of the salary by the state and county is justified because of the dual function of the county attorney: He represents his county in all legal matters (§ 7-4-2711, MCA), and he represents the State in the prosecution of all public offenses that occur within his county (§ 7-4-2716, MCA). A 1975 Attorney General's Opinion concluded that a county attorney is jointly employed by the county and the state for social security purposes. 36 Op. Att'y Gen. No. 32 (1975).

However, it is my opinion that for the purposes of participation in group health insurance programs, the Legislature intended to exclude county attorneys from the state group insurance plan. The legislative history supports this conclusion. Before 1979 a single statute authorized all state and local bodies to enter into group health insurance programs. § 11-1024, R.C.M. 1947. In 1979 the Legislature responded to the need to deal with the large number of state employees, placing the responsibility with the Department of Administration to design, supervise, and administer group benefit plans for all state employees. Consequently, separate statutory provisions were enacted for state government and for all other governmental bodies. Thus, section 2-18-702(1), MCA, provides for "[a]ll counties, cities, towns, school districts, and the board of regents" to enter into group plans "upon approval of two-thirds vote of their respective officers and employees." (Emphasis added.) Section 2-18-702(2), MCA, authorizes state employees and officials to proceed under the state group insurance provisions. It is clear that the Legislature intended all county employees and officers to proceed under subsection (1), not under the state group insurance plan.

THEREFORE, IT IS MY OPINION:

County attorneys are not eligible to participate in the State of Montana group health insurance plan.

Very truly yours,

MIKE GREELY
Attorney General