VOLUME NO. 42 OPINION NO. 37

COUNTIES - Authority to establish separate health insurance plan for employees in collective bargaining unit;

EMPLOYEES, PUBLIC - County's authority to establish separate health insurance plan for employees in collective bargaining unit;
LABOR RELATIONS - County's authority to establish separate health insurance plan for employees in collective bargaining unit;
MONTANA CODE ANNOTATED - Title 39, chapter 31; sections 2-18-702(1), 39-31-305(2);
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 116 (1980), 38 Op. Att'y Gen. No. 20 (1979), 37 Op. Att'y Gen. No. 113 (1978), 37 Op. Att'y Gen. No. 54 (1977).

HELD: A county with general government powers may not establish a separate health benefit plan for certain employees in a collective bargaining unit when a county employee-wide group insurance plan adopted in accordance with section 2-18-702(1), MCA, already exists.

12 November 1987

David L. Nielsen
Valley County Attorney
Valley County Courthouse
Glasgow MT 59230

Dear Mr. Nielsen:

You have requested my opinion concerning the following question:

> May a county with general government powers agree with the collective bargaining representative of a group of its employees to establish a health benefit plan for such group which is separate from a health insurance plan adopted pursuant to section 2-18-702(1), MCA, for all county employees?

I conclude that a county with general government powers may not agree to a separate group health insurance plan.

Valley County is a general powers local government whose road and bridge department employees are represented for collective bargaining purposes by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The county and the union have recently negotiated a collective bargaining agreement which anticipates establishing a group health insurance plan for these workers. Presently all county employees,

including those in the road and bridge department unit, are covered by a group health insurance plan entered into pursuant to section 2-18-702(1), MCA. The parties agreed that they would seek my opinion concerning the validity of the separate plan prior to its actual implementation.

Montana recognizes and protects the right of state and local government employees to organize themselves for collective bargaining purposes. See §§ 39-31-101 to 409, MCA. Central to this right is the employer's and labor organization's mutual obligation to bargain in good faith "with respect to wages, hours, fringe benefits, and other conditions of employment[.]" § 39-31-305(2), MCA. There is accordingly no dispute that group health insurance coverage is a mandatory subject of bargaining. See 38 Op. Att'y Gen. No. 20 at 71 (1979).

Nonetheless, it is equally well established that, when a particular employment condition for public employees has been legislatively set, it may not be modified through collective bargaining without statutory authorization. 38 Op. Att'y Gen. No. 116 at 408 (1980); 38 Op. Att'y Gen. No. 20; 37 Op. Att'y Gen. No. 113 at 486 (1978). This conclusion derives not from any express provision in the public employee bargaining statutes but from general principles of statutory construction. "Where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the latter will prevail over the former to the extent of any necessary repugnancy between them." City of Billings v. Smith, 158 Mont. 197, 211, 490 P.2d 221, 229 (1971); accord Phillips v. Lake County, 43 St. Rptr. 1046, 1049, 721 P.2d 326, 330 (1986); In re Williams, 42 St. Rptr. 1800, 1803, 709 P.2d 1008, 1010 (1985); see generally Tri-County Educators' Association v. Tri-County Special Education Cooperative No. 607, 225 Kan. 781, 594 P.2d 207, 209 (1979) ("[m]atters which have been fixed by statute or by constitution of this state are not negotiable under any circumstances"). The issue is whether the existence of a county-wide group health insurance plan under section 2-18-702(1), MCA, affects the county's authority to establish the less inclusive plan.

Section 2-18-702(1), MCA, states:

> All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees 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 and employees and their dependents.

The language of this provision is mandatory and clearly contemplates, inter alia, county-wide group health insurance plans upon the necessary employee approval. See 37 Op. Att'y Gen. No. 54 at 213 (1977). The apparent purpose of employee-wide coverage is reduction of insurance costs through creation of a risk pool which is as large as possible. See Feb. 8, 1979 Minutes of Select Committee on Employee Compensation at 5-6. Irrespective of the precise reason for the comprehensive coverage requirement, the provision neither expressly nor impliedly authorizes excision of one employee group from that coverage merely because its terms and conditions of employment are subject to collective bargaining. Since section 2-18-702(1), MCA, is the more specific statute with respect to the issue presented and speaks in mandatory terms, I conclude that a county with general government powers may not enter into a group health insurance plan, separate from that covering its other employees, for individuals who are part of a collective bargaining unit. It must be emphasized, however, that such a county remains obligated to bargain over other health insurance matters, such as monetary coverage limits, deductible amounts, or the level of employee contributions, which may involve modification of an existing group plan.

THEREFORE, IT IS MY OPINION:

> A county with general government powers may not establish a separate health benefit plan for certain employees in a collective bargaining unit when a county employee-wide group insurance plan adopted in accordance with section 2-18-702(1), MCA, already exists.

Very truly yours,

MIKE GREELY
Attorney General