

VOLUME NO. 43

OPINION NO. 79

EDUCATION - Authority to enter into or modify group insurance plans;
EMPLOYEES, PUBLIC - Authority to enter into or modify group insurance plans;
LABOR RELATIONS - Authority to enter into or modify group insurance plans;
SCHOOL DISTRICTS - Authority to enter into or modify group insurance plans;
MONTANA CODE ANNOTATED - Section 2-18-702;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 37 (1987),
38 Op. Att'y Gen. No. 20 (1979).

- HELD: 1. Under section 2-18-702(1), MCA, a governing body must only obtain a two-thirds vote of all its officers and employees to authorize entry into an initial group insurance plan and, once so authorized, the governing body may enter into any such plan it deems appropriate and may modify that or subsequent group insurance plans without further vote.
2. A governing body may agree to modify a group insurance plan covering employees represented for collective bargaining purposes unless such changes would affect employees in another collective bargaining unit represented by a different labor organization; in the latter situation, concurrence of both representatives is required before the modifications could be made.

December 18, 1990

David L. Nielsen
Valley County Attorney
221 Fifth Street South
Glasgow MT 59230

Dear Mr. Nielsen:

You have requested my opinion addressing the following questions:

1. Under section 2-18-702(1), MCA, is a two-thirds vote of officers and employees needed in order for a governing body to (a) change group insurance carriers, (b) change certain policy provisions, or (c) renew an existing policy?
2. Can a governing body agree in a collective bargaining agreement to give one bargaining unit exclusive authority to select a group insurance carrier and determine certain policy provisions without the agreement of a second bargaining unit?

Your letter of inquiry states that teachers have a collective bargaining unit within the Glasgow school district. The school district custodians are members of another collective bargaining unit and the remainder of the school district employees are not members of any collective bargaining unit. One insurance policy provides coverage for all school district officers and employees.

Several employees of the district have expressed a desire to change insurance carriers. You have informed me that the bargaining agreement with the teachers' association precludes the school district from modifying policy conditions without the association's consent. You ask specifically if a governing body, here the school district, is required to obtain a two-thirds vote of all its officers and employees before changing group insurance carriers, altering certain policy provisions, or renewing an existing policy.

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

Group insurance for public employees and officers. (1) 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. [Emphasis added.]

The language of this statute is clear, and thus speaks for itself. Hammill v. Young, 168 Mont. 81, 86, 540 P.2d 971, 974 (1975). The only purpose of the vote called for by section 2-18-702(1), MCA, is to simultaneously authorize and require entry into a group health or other specified plan and, once such initial authorization is given, no further votes are mandated. A governing body therefore need not obtain a two-thirds vote of all officers and employees to change group insurance carriers or policy provisions, or renew an existing policy. Decisions regarding the precise nature of insurance coverage after the original vote are instead matters subject to the governing body's discretion except as otherwise constrained by law.

Next you ask whether the school board may agree in a collective bargaining agreement to give the teachers' collective bargaining unit exclusive authority to select the district's group insurance carrier and determine certain policy provisions. Group health insurance matters, of course, are a mandatory subject of bargaining. 38 Op. Att'y Gen. No. 20 at 71 (1979).

In 42 Op. Att'y Gen. No. 37 at 149 (1987), the Attorney General held that a county could 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, existed. That opinion also stated:

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.

The opinion did not address the question of whether implementation of such changes could occur without approval by other affected employees or their collective bargaining representatives. With respect to unrepresented employees, I find no statutory prohibition to modifying a benefit plan consistent with any negotiated settlement reached with the collective bargaining representative of another employee group. As held above, once the requisite consent is given by the overall employee group, the governing body is vested with authority, except to the extent constrained by other law, to modify a benefit plan. No such constraint exists as to unrepresented employees. A governing body, however, cannot ordinarily change existing terms and conditions of employment for represented employees without consent of those employees' collective bargaining unit, and the school district here may therefore not alter the plan absent approval by the representative of the second collective bargaining unit affected by the proposed changes.

THEREFORE, IT IS MY OPINION:

OPINIONS OF THE ATTORNEY GENERAL

1. Under section 2-18-702(1), MCA, a governing body must only obtain a two-thirds vote of all its officers and employees to authorize entry into an initial group insurance plan and, once so authorized, the governing body may enter into any such plan it deems appropriate and may modify that or subsequent group insurance plans without further vote.
2. A governing body may agree to modify a group insurance plan covering employees represented for collective bargaining purposes unless such changes would affect employees in another collective bargaining unit represented by a different labor organization; in the latter situation, concurrence of both representatives is required before the modifications could be made.

Sincerely,

MARC RACICOT
Attorney General