

OPINION
59-49

July 20, 1959 (OPINION)

COUNTIES

RE: County Commissioners - Power to Contract for Group Insurance for
County Officials

This is in response to your request for an opinion on the following question:

Do the County Commissioners have the power to enter into a contract between Divide County and New York Life Insurance Company so as to provide group insurance benefits for county officials and county employees?"

You advise further that the contract provides that the county will contribute 50 percent of the premium and the employee would be required to pay the other 50 percent.

The proposed program is not novel in the field of labor and employment. Such fringe benefits are considered as part of the wage or remuneration contract. This type of program is normally found in private employment. Much can be said in favor of such program.

There appears to be no direct statutory inhibition against such program. However, we have statutes governing the salaries and wages of elected county officials. Indirectly this would constitute a bar to such a program as pertaining to county officials. Such program would in effect raise the salary of the officials which would be in direct conflict with the statute.

There are of course other programs which do the same thing; for example Social Security, Workmen's Compensation, etc., but there we have expressed legislation authorizing or directing participation in such program.

In private employment we find in addition to benefits mentioned above such benefits as food, clothing, lodging and education, but in governmental employment they are a rarity and depend upon expressed need or special situations, and in most instances there is legislation to provide for such extra (furnishing home, etc., for governor, heads and members of certain state institutions, etc.)

Sick leave and ordinary leave with pay have become standard practice and have been used extensively by governmental employees. These are considered inducements for employment.

The Court in State of Tennessee ex rel. v. City of Memphis, 251 S.W. 46, 27 A.L.R. 1257 held that a municipality had the power and authority to effect group insurance for its employees. A similar conclusion was reached as pertaining to school teachers of a municipal school district in the case of Fred Nohl v. Board of

Education of City of Albuquerque 199 Pac. 373. In Bowers v. Albuquerque 200 Pac. 421 the Court said that a statute prohibiting an increase in salary during the term for which elected did not prohibit or invalidate group insurance as to officers having no fixed term of office.

We have no cases directly in point in North Dakota, but what has been said about municipal officers and employees applies to employees of the county. However, because of the statutes regulating the salary and wages of certain officials we must conclude that such insurance program cannot include county officers whose salaries are set by law.

It is therefore our opinion that a group insurance program can be put into effect but may not include such county officials whose salaries are set by law unless the Legislature specifically provides for such program. The county commissioners are authorized and empowered to determine the wages and salaries of its employees and being that a group insurance program is in effect an increase of wages or salary for the employees it would come within the authority granted to county commissioners.

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