

**OPINION
61-225**

July 6, 1961 (OPINION)

STATE

RE: Employees - Expenditure of Highway Funds for Group Hospitalization
and Insurance

This is in reply to your letter in which you ask this office to review its opinion issued to Mr. A. W. Wentz under date of December 14, 1960. This opinion dealt with the question whether or not the Highway Commissioner was authorized to expend highway funds for contributions toward the cost of an employee's voluntary group hospitalization and insurance plan and concluded that such expenditure could not be legally permissible.

This office has previously issued its opinion that municipalities have the power to increase wages, and as such could provide group insurance for its employees (August 1, 1955, to Miss Roberta C. Burr). A similar conclusion was reached with reference to counties and their employees.

However, municipalities and counties are a separate legal (juristic) entity, whereas the State Highway Department is a department of the executive branch of government of the state. Municipalities, including counties, have a different standing and statutes than the Highway Department. As one example of the difference, municipalities are political entities with the power to levy and collect taxes within prescribed limits set by the Legislature and the Constitution. They may exercise discretion within such limits. The Highway Department has no such authority. Its revenue-producing acts are set by the Constitution or the Legislature. It has no discretionary powers in this respect.

We must also consider, while not necessarily controlling but of significance, the fact that the opinion to be reviewed was issued in December of 1960, shortly before the Legislative Assembly convened. The Legislature did not modify any of the statutes relating to any of the powers of the Highway Department as is material here. This we interpret to be tacit approval of the opinion issued.

It is also observed that where state departments are authorized to make contributions to employee's pension or insurance programs (OASIS and Social Security) there is specific statutory authority. Mandatory participation by state department employees in any insurance program without specific statutory authority is not favored.

In conclusion, we wish to advise that we find no compelling reason to reverse the opinion previously issued.

LESLIE R. BURGUM

Attorney General