

1966 O. A. G.

OFFICIAL OPINION NO. 44

December 29, 1966

**MUNICIPAL CORPORATIONS—INSURANCE—Using City
Funds to Pay Premiums for Group Health and Accident
Insurance for Employees and Their Dependents.**

Opinion Requested by Hon. Frederick T. Bauer, State Representative.

On October 18, 1965, at your request I rendered an opinion concerning the authority of municipalities to purchase group health and accident insurance for its employees, which Opinion has been published as 1965 O.A.G. No. 50, p. 262. Since that time this office has received such a number of requests for clarification, many of which indicate that the Opinion has been construed in a manner different than was intended, that a supplemental explanatory opinion appears desirable.

Re-examination of that Opinion reveals that the language used lends itself to misinterpretation. The Opinion's non-verbalization of certain underlying assumptions concerning insurance would lead the reader who does not himself provide the assumptions to interpret the Opinion as stating that a public employer may purchase group insurance, whether life or health and accident, only on the actual physical bodies of the actual employees. The law does not support, and the Opinion was not intended to advance, such a conclusion.

The pertinent statute is Acts 1957, ch. 296, § 2, the same being Burns IND. STAT. ANN., § 49-4002, which provides:

“A public employer shall have the right and power to contract for group insurance in relation to its employees and, in the case of life insurance, it shall, and in the case of other kinds of insurance, it may, appropriate and pay a part of the cost of such insurance out

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of its funds available for the payment of salaries and wages of employees, and any such insurance contract shall not be cancelled by said public employer during the policy term of such contract.”

In considering this statute the earlier Opinion said:

“Your attention is directed to the word ‘employee.’ This statute does not authorize a municipality to purchase insurance coverage for dependents of firemen and policemen.”

Your attention is now directed to the word “for” in the above passage. The intent of the above passage was to preclude the possibility of a municipality purchasing health and accident insurance that would indemnify dependents of employees for medical expenses incurred by them. There was no intent to prevent the purchase of insurance that would protect employees from loss the employees might incur as a result of the sickness or injury of a dependent. The assumption omitted from the earlier Opinion is that insurance is intended to insulate a party from financial loss under certain contingencies. The Indiana Supreme Court, in *State v. Willett*, 171 Ind. 296, 86 N.E. 68 (1908), described various forms of insurance and then said, on p. 301, on p. 70 at 86 N.E.:

“But the contracts made by all kinds of insurance companies are plain indemnity contracts; contracts by which one party agrees, for a stipulated sum, to assume some risk borne by the other party, and, if the apprehended loss occurs, to make the loser whole by reimbursing him fully, or to the extent agreed upon in the contract.”

The passage in the earlier Opinion was intended to limit the insurance purchased by a municipality to those instances where the employee did in fact have a legal risk to be assumed by the insurer. For illustration we can consider the medical expenses connected with an arm accidentally broken at a family picnic. If it is the employee’s arm there is no doubt that he is liable for the medical expenses connected with the treatment of that arm. If it is the arm of the employee’s wife

he would also be liable for such expenses. However, if it is the arm of the wife of his college student son he would have no legal obligation to pay such expenses. Therefore, even though the employee might have voluntarily assumed responsibility of supporting his son and daughter-in-law through college, even though they are in a financial sense his dependents, he cannot shift the risk of such medical expenses onto an insurance company by means of payment made by the municipal employer. Similarly, maiden aunts and second cousins living in his house could not be insured by municipality-paid premiums.

This is the distinction that the Opinion attempted to draw. The statement was that the municipality was not authorized "to purchase insurance coverage for dependents of firemen and policemen," not that the municipality was not authorized "to purchase insurance for firemen and policemen that covered the legal dependents of such employees."

The earlier Opinion interpreted the statute as requiring the concept known as "insurable interest" to be strictly construed. A good definition of that concept as used in relation to property is contained in Black's Law Dictionary, 4th Ed., p. 942:

"Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest."

It is only in those instances where the contemplated peril would cause direct and unavoidable financial loss to the employee, only in those instances where the employee would be legally liable for the expenses, that the municipality may contribute toward the insurance designed to avoid that loss.

An employee may feel a moral responsibility based on family relationship to voluntarily assume liability for such loss to another person. Quite often the employee's connection with the other person is such that he has sufficient insurable interest to purchase health and accident insurance for that person. It was that fact that inspired the last paragraph of the earlier Opinion, namely:

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“This section does not preclude an employee from paying the difference between the cost of group insurance covering himself only and the cost of group insurance covering his family.”

The employee should have the benefit of buying the insurance at the reduced rate that would be available from the group insurance plan sponsored by the municipal employer, but it should be the employee and not the municipality that pays for such insurance.

OFFICIAL OPINION NO. 45

December 30, 1966

TEACHERS—Tenure Contracts—Honoring of Contracts Where School Corporation Reorganization Has Been Effected—Accumulated Sick Leave of Teacher.

Opinion Requested by Hon. William E. Wilson, State Superintendent of Public Instruction.

Your letter of December 12, 1966, reads as follows:

“After studying official opinions, No. 41, June 8, 1962, and No. 63, Nov. 5, 1962 I would appreciate receiving an official opinion on the following:

“A teacher taught twelve successive or consecutive years in a city school system under regular teachers contract from September 1942 to June 1954, and then in September 1954 began to teach in a township of the same county but outside of the city school corporation in which the twelve consecutive years mentioned were taught. The teacher then taught eight consecutive or successive years under regular teachers contract from