

OFFICIAL OPINION NO. 77-77, School districts do not have authority to provide self-insurance for employees

September 2, 1977

Mr. Fern Wanek, Deputy State Superintendent  
Department of Education and Cultural Affairs  
Division of Elementary and Secondary Education  
New State Office Building  
Pierre, South Dakota 57501

Official Opinion No. 77-77

**School districts do not have authority to provide self-insurance for employees**

Dear Mr. Wanek:

You have requested an opinion from this office based on the following factual situation:

FACTS:

For a number of years the Sioux Falls School District has carried a policy of group life, health and accident insurance on its employees and their families. The district pays 75 percent of the premium on each employee and the employee authorizes a payroll deduction for 25 percent. Premiums have steadily increased. For the policy year ending October 1, 1977, premiums will aggregate something over \$500,000. The district's insuring firm has increased premiums by 40 percent effective May 1, 1977.

A competing firm proposed that the district self-insure its medical benefits program and insure through that organization any claims in excess of a specific dollar maximum (i.e., stop-loss coverage). In effect, the district would pay claims up to a maximum aggregate of, for example, \$600,000 with its own funds. The stop-loss carrier would fully insure all claims in excess of that amount annually. The group life insurance would be purchased from the same insurer which carries the stop-loss coverage. The school district would retain the services of this competing organization to process and pay all claims according to the benefits prescribed by the plan.

Based on the above facts, you ask the following question:

QUESTION:

Does the school district have authority to provide life and health benefits for its employees by a self-insurance, stop-loss and life insurance plan as described above?

A similar question has been raised with regard to the City of Sioux Falls and is discussed in Official Opinion No. 77-76, dated August 29, 1977.

As is stated in Official Opinion No. 77-76, SDCL 58-6-10 presents the greatest obstacle to a self-insurance plan. That provision prohibits the State and its political subdivisions from engaging in insurance transactions. "Insurance" is broadly defined in SDCL 58-1-2(1) as "a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies," and, in my opinion, encompasses the proposed self-insurance, stop-loss plan. It is my understanding that the school district would be operating the insurance plan, in violation of SDCL 58-6-10, inasmuch as aggregate claims up to \$600,000 (or some other established amount) would be investigated by and paid through the school district.

An additional problem is raised by the statutes authorizing group insurance coverage for school district employees. SDCL 13-10-3 provides:

Any school board shall have the power to enter into group life and group health insurance contracts for the protection and benefit of its employees, and the immediate families of such employees, and to pay any part or all of the necessary premiums therefor.

SDCL 13-8-39 enumerates the general powers of the school board and provides, in part, that it may "carry liability and other insurance."

In my opinion, to state that either of the above provisions expressly or impliedly authorizes a school district to offer a self-insurance plan for its employees would constitute a strained interpretation. I cannot conclude from these provisions that the Legislature intended such an authorization and I am of the opinion that enabling legislation is necessary.

Therefore, for the above stated reasons, it is my opinion that the answer to your specific

question is no.

Respectfully submitted,

William J. Janklow  
Attorney General

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