



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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May 15, 1969

Dr. John Kinross-Wright  
Commissioner of Texas  
Department of Mental  
Health and Retardation  
Box S, Capitol Station  
Austin, Texas 78711

Opinion No. M-394

Re: The legality of a state department head's decision to withhold insurance premium payments from the salaries of employees for only one insurance company.

Dear Dr. Kinross-Wright:

Reference is made to your letter in which you request an opinion from this office as to the captioned matter. We quote from your letter, in part, as follows:

"By . . . letter dated February 27, 1969, all superintendents of institutions under control and management of this Department were notified of my decision adopting the Northeastern Life Insurance Company of New York as the official insurance carrier of this Department and that this carrier would be the only insurance company to whom premium payments would be made on a payroll deduction basis. The payroll of all institutions of this Department are prepared and processed by the Central Office of the Department. My decision and action was a culmination of several weeks' study by a committee of employees appointed by me to study and report to me an insurance program which would be the best for all of the employees of our Department . . .

". . . Wherefore, your opinion and advice as to the legality of withholding insurance premium payments from the salaries of employees of this Depart-

ment and its institutions for one insurance company only is respectfully requested. "

It is noted from materials furnished by you that the Department's proposed insurance program consists of group life, health and accident insurance. The statutory provision regulating group life insurance for State employees, Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, reads, in part, as follows:

"(3) A policy issued to . . . any association of state employees . . . and any department of the state government which employer or association shall be deemed the policyholder to insure the employees of . . . any such department of the state government, members of any association of state . . .

"(b) The premium for the policy may be paid in whole or in part from funds contributed by the policyholder or in whole or in part from funds contributed by the insured employees . . . and provided further, that the employer may deduct from the employee's salaries the employee's contributions for the premiums when authorized in writing by the respective employees so to do . . . " (Emphasis added.)

Subsection (2), Section 1, Article 3.51 of the Texas Insurance Code is the applicable provision relating to group health and accident insurance for State employees. It provides, in part, as follows:

"Sec. 1(a) The State of Texas and each of its . . . departments, agencies, associations of public employees . . . are authorized to procure contracts insuring their respective employees . . . under a policy or policies of group, health, accident, accidental death and dismemberment, disability income replacement and hospital, surgical and/or medical expense insurance . . . The employees contributions to the premiums for such insurance issued to the employer or to an association of public employees as the policyholder may be de-

ducted by the employer from the employee's salaries when authorized in writing by the respective employees so to do. The premium for the policy may be paid in whole or in part from funds contributed by the employer or in whole or in part from funds contributed by the insured employees."

When the requisites of Articles 3.50 and 3.51 have been met and the state employee has consented there is no question but that the department head has the authority to make the payroll deductions for the payment of the group insurance premiums. Attorney General's Opinion No. V-1374 (1951). The question is now presented: Do Articles 3.50 and 3.51 of the Insurance Code allow the department head to restrict payroll deductions for group insurance premium payments to only those employees having coverage with one particular insurance company?

We answer this question in the affirmative.

Articles 3.50 and 3.51, with regard to the payroll deduction aspect respectively read "the employer may deduct from the employee's salaries" and "the employee's contributions to the premiums . . . may be deducted by the employer." (Emphasis added.) In discussing the meaning of "may", the Court in Kleck v. Zoning Board Civ. of Adjustment of the City of San Antonio, 319 S. W. 2d 406 (Tex. Civ. App. 1958, error ref.) stated:

"The ordinary meaning of the word 'may' is merely permissive in character . . . In Samuel v. American Mortgage Corp., Tex. Civ. App., 78 S. W. 2d 1036, 1039, affirmed 130 Tex. 107, 108 S. W. 2d 193, the Court said:

'Where the word "may" occurs in a statute, it is to be construed as merely permissive, and not as mandatory, except for the purpose of sustaining or enforcing a right -- either public or private -- but is never construed as mandatory for the purpose of creating a right . . .' (Emphasis added.) In accord, 67 C. J. S. 401, Officers, Sec. 113.

The two pertinent Articles, 3.50 and 3.51 of the Insurance Code, when read in their entirety, reflect that the making of payroll deductions for state employees in payment of group insurance premiums, is a matter within the discretion of the department head and does not create a contractual right or obligation. Statutes directed to public officers concerning modes of procedure methods, and systems are construed as discretionary only, provided no mandatory duty is imposed. 67 C. J. S. 399, Officers, Sec. 113. As was stated in Attorney General's Opinion No. V-1374 (1951), with particular reference to Article 3.51:

"We think it is within the discretion of each department head to decide whether and with whom he will contract for insurance covering his employees."  
(Emphasis added.)

To rule that it is mandatory for the department head to make payroll deductions for employee's contributions for a group insurance program, wherein an association of public employees is the policyholder, might impair the department heads' authorization to procure the best group insurance program available for his employees.

Therefore, the decision of the Texas Department of Mental Health and Mental Retardation to withhold group insurance premium payments from the salaries of its employees, when authorized by such employees, for only one insurance company, is not in violation of the applicable provisions of the Insurance Code. It is within the discretion of the department head to make such a decision. The right of a state employee to contract with any group insurance carrier and pay the necessary premiums thereto is not affected by whether the statutory payroll deduction authorization is permitted by a department head. However, once the department head has exercised his discretion and provided for the payroll deduction, certifying his payroll to the State Comptroller of Public Accounts, the latter is required to make the proper payroll deduction. Attorney General's Opinion No. V-1374, supra.

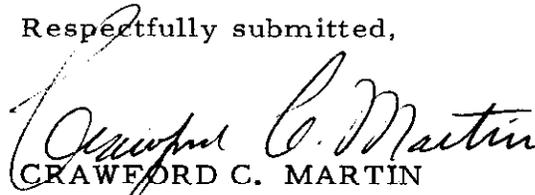
The employee is merely given an option under the statute to have payroll deductions for group coverage where his employer may authorize his participation in the group plan in such manner. The employer, who is the state department head, is the person to whom the statute is directed and in whom the discretion is given to authorize the payroll de-

duction. The deduction is not made mandatory by statutory language calculated to effect that intent.

S U M M A R Y

Whether to allow or disallow the payroll deductions of state employees' contributions for group insurance premiums is a matter within the discretion of the state department head.

Respectfully submitted,

  
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