

1973 WL 26708 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1973

**\*1 Re: Authority of a county or municipality to provide group insurance for employees**

Honorable G. P. Collison  
County Attorney  
Messrs. Callison & Born  
Attorneys at Law  
505 Textile Building  
Greenwood, South Carolina 29646

Dear Mr. Callison:

Thank you for your letter of April 18, 1973, inquiring whether the Greenwood County Council has the power to provide for group insurance for its employees.

With respect to a municipality, I have expressed the view heretofore that cities have the authority to make expenditures for such purpose. This opinion was expressed with some reservation, but noted that the trend of decisions is to uphold expenditures of public monies for insurance on public employees as being for a public purpose. A copy of that opinion is enclosed herewith.

The powers of municipalities are, however, greater than those of a county, and with respect to counties, it is my view that the Supreme Court would most probably uphold such an expenditure. The matter is not at all clear, however, in my opinion, with respect to the powers of counties.

I note that Florence County, for example, has authorized the purchase of group insurance for county employees by the County Council for Florence County. See Act No. 921 (71 Acts 2054).

It would be by far the most preferable course of action to secure legislative authorization, but this is not with the new difficulty of the local government amendment to the Constitution of this State, which was recently ratified and which is now embedded in the Constitution. Section 7 of the new Article 8 (72 Acts 3185) requires the General Assembly to provide not more than five alternate forms of government for the counties and requires that this be done by general law. The section specifically provides: 'No laws for a specific county shall be enacted—.'

I would assume that this provision is now operative and precludes further special laws for existing counties, although their present powers are continued until changed in a manner provided by law.

The counties are therefore faced, as I see it, with the problem of undertaking the purchase of group insurance at the risk of being challenged on constitutional grounds. Such objections generally relate to constitutional provisions precluding the use of public funds for private purposes. Additionally, the counties, in my opinion, are still limited by the provisions of Article 65, Section 6 of the Constitution of South Carolina. My views in this respect are set forth in an opinion dated March 27, 1973, and addressed to Senator Biley of Greenville County. A copy is enclosed herewith. It was the intent of the General Assembly to repeal that portion of Article 10, Section 6, dealing with the powers of counties which have heretofore been strictly construed by the Supreme Court of this State, as you are well aware. Nevertheless, it still exists in the Constitution by reason of the failure of the General Assembly to submit it to the voters along with the new local government amendment and, consequently, I believe

that it is still in full force and effect. The counties are, moreover faced with a more serious question as to whether they can obtain legislative relief by special enactment, such as was heretofore adopted for Florence County, but which is now apparently precluded by the newly ratified local government amendment.

\*2 A form of 'tax sheltered annuities' was heretofore sought to be entered into by school districts and I previously expressed the opinion that this type of arrangement required legislative authorization. This was accomplished in many school districts, including the school districts of Greenwood County. See Act No. 984 (68 Acts 2375). This purchase, however, involved certain contractual arrangements and it is not necessarily the type of group insurance with which you are concerned.

In summary, it is my opinion that municipalities have the authority to purchase group insurance for their employees, but that the authority of counties to purchase such insurance is subject to doubt. Moreover, it appears improbable that legislative authorization for specific counties is permitted by the new constitutional amendment.

I am taking the liberty of forwarding a copy of this letter to Mr. Russell R. Shetterly, Executive Director of the Association of Counties, for his information. That Association is now preparing legislation to implement the provisions of the new local government amendment, and the inclusion of authority to purchase group insurance may be a desirable authority for inclusion in its proposals.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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