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INSURANCE, GROUP LIFE — COUNTY MAY NOT ENTER INTO AGREEMENT WITH LIFE INSURANCE COMPANY, COVERING COUNTY EMPLOYES WHERE AGREEMENT PROVIDES COUNTY IS TO PAY PORTION OF PREMIUM ON POLICY — SECTIONS 9426-1, 9426-2 G.C.

SYLLABUS:

A county may not enter into an agreement with a life insurance company for group life insurance covering the employes of such county which agreement provides that the county is to pay a portion of the premium on such policy.

Columbus, Ohio, October 22, 1942.

Hon. Ray Bradford, Prosecuting Attorney,
Batavia, Ohio.

Dear Sir:

I have your letter wherein you ask whether a county can enter into an agreement with a life insurance company for group life insurance insuring the lives of employes of the county, under the terms of which agreement the county is to pay a certain portion of the premium and the covered employes are to pay the balance.

You refer me to Section 9426-1, General Code, and Opinion No. 882 of the Opinions of the Attorney General for 1937, in which opinion my predecessor determined that the provisions of Section 9426-1, General Code, as it then existed, permitted the issuance of a group life insurance policy to a municipal corporation insuring the lives of the employes thereof. My predecessor also reached the conclusion in said opinion that a municipal corporation could pay a portion of the premium due under the terms of such policy. You suggest that the reasoning contained therein may also be applicable to counties.

As originally enacted, Section 9426-1, General Code, did not specifically and in terms provide that life insurance covering employes of a political subdivision of the State of Ohio should be group life insurance within the meaning of the Group Life Insurance Act. My predecessor, however, determined that the section as it then existed was broad enough in its terms to include employes of a municipality and he reached the

further conclusion that the municipality could pay all or part of the premiums on a group life insurance policy covering its employees. This conclusion was based upon the provisions of Sections 3 and 7 of Article XVIII of the Constitution of Ohio which respectively provide:

Section 3.

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

Section 7.

“Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.”

Similar conclusions with respect to the effect of these constitutional provisions had been reached by former Attorneys General. See Opinions of the Attorney General for 1927, Vol. I, page 48; Opinions of the Attorney General for 1928, Vol. II, page 1099; and Opinions of the Attorney General for 1931, Vol. II, page 889. In my Opinion No. 4685, found in the Opinions of the Attorney General for 1941, at page 1091, I reached a similar conclusion with respect to the powers of a municipal corporation.

Since the opinions of my predecessors, as well as my own, were based upon the constitutional provisions above quoted which are applicable to municipal corporations but not to counties, the reasoning contained in such opinions would not be applicable to your question and they would be no authority for the proposition that a county might pay all or part of the premiums on a group life insurance policy insuring the lives of the county employees.

Section 9426-1, General Code, now provides in part:

“(1) Group life insurance is hereby declared to be that form of life insurance covering not less than fifty employees with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring only all of his employees, or all of any class or classes thereof, determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the

employer; provided, however, that when the premium is to be paid by the employer and employee jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five per centum of such employees may be so insured. * * *

(2) The following forms of life insurance are hereby declared to be group life insurance within the meaning of this act: * * *

(g) Life insurance covering employees of a political subdivision or district of the state of Ohio, or an educational or other institution supported in whole or in part by public funds, or of any class or classes thereof, determined by conditions pertaining to employment, or of the state of Ohio or any department or division thereof written under a policy issued to such political subdivision, district or institution, or the proper official or board of such state department or division which shall be deemed to be the employer for the purpose of this act, the premium on which is to be paid by such employees for the benefit of persons other than the employer; provided, however, that nothing herein contained shall permit the state of Ohio or any of the political subdivisions enumerated herein to pay any premiums stated in this section; and provided that when the benefits of the policy are offered to all eligible employees of a political subdivision or district of the state of Ohio or an educational or other institution supported in whole, or in part, by public funds, or a state department or division, not less than seventy-five per cent of such employees may be so insured; provided further that when employees apply and pay for additional amounts of insurance, a smaller percentage of employees may be insured for such additional amounts if they pass satisfactory medical examination. * * *

In my said Opinion No. 4685, I said:

“It will be noted that paragraph (g) of this section contains no language which prohibits a political subdivision from paying premiums on a group life insurance policy covering the employees of such political subdivision, but provides that nothing in the section shall permit such political subdivision to pay the premiums. The language of the section, however, does provide that the premiums on such a policy must be paid by the employees if such insurance is to fall within the statutory definition of group life insurance.

Section 9426-2, General Code, provides in part:

‘Except as provided in this act, it shall be unlawful to make a contract of life insurance covering a group in this state.’

This language is plain and explicit and prohibits the making of a contract of insurance covering a group except as provided in the group insurance act of which Section 9426-1, General Code,

is a part. A contract of group life insurance entered into by a municipal corporation covering the employes of such corporation would be prohibited by the language above quoted if the contract provided that such municipal corporation was to pay a portion of the premium."

This language is also applicable to your question. While it is true that I advised that a municipal corporation might pay all or a portion of the premiums on such a policy covering its employes (except members of the police and fire departments), I based my conclusion upon the provisions of the Constitution which were controlling and overthrew the statutory provisions to the extent of any conflict therewith. As has been noted heretofore, these constitutional provisions do not apply to counties and the provisions of Sections 9426-1 and 9426-2, General Code, are applicable to group life insurance contracts covering county employes. These sections prohibit the making of any such contract if the county pays all or a portion of the premium thereon.

For these reasons, you are advised, in specific answer to your inquiry, that a county may not enter into an agreement with a life insurance company for group life insurance covering the employes of such county which agreement provides that the county is to pay a portion of the premium on such policy.

Respectfully,

THOMAS J. HERBERT
Attorney General.