



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

March 29, 1972

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. M-1109

Re: Construction of Articles 3.50
and 3.51 of the Texas Insurance
Code with reference to the
meaning and applicability of
"group" to permit payroll
deductions for insurance pre-
miums for state employees.

Dear Mr. Calvert:

Reference is made to your letter of February 15, 1972 (as clarified by your letter of February 29, 1972) which requested an opinion from this office as to the above captioned matter. The following questions were asked:

"(1) Under the provisions of Article 3.50 of the Insurance Code, what is the definition of a 'group' which will allow payroll deductions and also the State paying a portion of the premium for a State employee?

"(2) Under the provisions of Article 3.51 of the Insurance Code, what is the definition of a 'group' which will allow payroll deductions and also the State paying a portion of the premium for a State employee?

"(3) Under the provisions of Article 3.50 of the Insurance Code, could a payroll deduction be legally made for or the State contribute premiums for an employee on a policy of wholesale, franchise, or employee life insurance?

"(4) Under the provisions of either Article 3.50 or Article 3.51 of the Insurance Code, could a payroll deduction be legally made for or the State contribute premiums for an employee on a policy contracted for by the employee and issued to that employee under permission of the Department Head?

"(5) Under the provisions of Article 3.50 of the Insurance Code, Section 1, Subsection (3) and also Sections 2 and 3 seem to be all of the provisions that would apply to group insurance for State employees which authorize payment by the State for an employee for group life insurance, is this correct, or would other provisions apply, and if so, what provisions?

"(6) Under the provisions of Article 3.51 of the Insurance Code, does Section 2 of this Article make the provisions of Article 3.50 of the Insurance Code, as set out in Question No. 5 above, applicable to insurance policies contracted for under Article 3.51 of the Insurance Code?"

Question No. 1 asks for the definition of a group under Article 3.50 of the Texas Insurance Code so as to allow payroll deductions and also the state paying a portion of the premium for a state employee. A group, for the purpose of group life insurance under Subsection (3), Section 1 of Article 3.50 of the Texas Insurance Code, is a class of designated employees, of not less than 10 nor less than 75% of the eligible employees (excluding any employee as to whom evidence of individual insurability is not satisfactory to the insurer) of any association of state employees or employees of any department or agency of the state.

Question No. 2 asks for the definition of a group under Article 3.51 of the Texas Insurance Code so as to allow payroll deductions and also the State paying a portion of the premiums for a state employee. Under the provisions of Article 3.51 there is no definition of a group as can be found in Article 3.50 and the provisions of Article 3.50 may not be used in this connection. See Attorney General's Opinion No. V-1374 (1951). For the

purposes of Article 3.51, a group may consist of any number of employees in excess of one, as determined by the contract between the department head and the insurer, this being a matter of discretion with the department head. See Attorney General's Opinion No. M-394 (1967).

Question No. 3 asks whether a payroll deduction can be legally made for or the State contribute premiums for an employee on a policy of wholesale, franchise, or employee life insurance. Your questions appears to assume that a policy of wholesale, franchise, or employee life insurance can be issued to a group of state employees. Under the provisions of Subsection (3), Section 1 of Article 3.50, the department head of the state government or the association is deemed to be the policyholder for purposes of group life insurance. Subsection (6), Section 1 of Article 3.50 states that:

"(b) Wholesale, franchise, or employee life insurance may be issued to (1) the employees of a common employer or employers, covering at date of issue not less than five employees; . . ."

Thus, Subsection (6) does not provide for issuance of a wholesale, franchise, or employee life insurance policy to a department head or association as the policyholder but rather directly to the employees. It is the opinion of this office that policies of wholesale, franchise, or employee life insurance cannot be issued to state employees under Article 3.50 of the Texas Insurance Code and payroll deductions cannot be legally made for such premium payments nor can the state contribute premiums for a state employee insured under wholesale, franchise or employee life insurance policies.

Question No. 4 asks whether, under the provisions of either Article 3.50 or Article 3.51 of the Texas Insurance Code, a payroll deduction can be made or the State contribute premiums for an employee on a policy contracted for by the employee and issued to that employee under permission of the department head.

Subsection (3), Section 1, Article 3.50 of the Texas Insurance Code states, 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. . ."

Subsection (2), Section 1 of Article 3.51 of the Texas Insurance Code, states, in part, as follows:

"Sec. 1. (a) The State of Texas and each of its political, government, and administrative subdivisions, departments, agencies, associations of public employees,. . . are authorized to procure contracts with any insurance company doing business in this state insuring their respective employees,. . ."

In light of the above quoted statutory language, your question must be answered in the negative. Under the provisions of Article 3.50, the insurance policy must be issued to the department and under the provisions of Article 3.51, only the department head has the authority to procure the contracts of insurance.

Question No. 5 asks whether the provisions of Article 3.50 of the Texas Insurance Code, Section 1, Subsection (3) and also Sections 2 and 3, are the only provisions that apply to group insurance for state employees which authorize payroll deductions and premium payments by the State for an employee for group life insurance. Your question is answered in the affirmative.

Question No. 6 asks whether the provisions of Subsection 2 of Article 3.51 of the Texas Insurance Code makes the provisions of Article 3.50 of the Texas Insurance Code, as set out in Question No. 5, applicable to insurance policies contracted for under Article 3.51. Question No. 6 is answered in the negative. See Attorney General's Opinion No. V-1374 (1951).

S U M M A R Y

Under the provisions of Subsection (3), Section 1 of Article 3.50 of the Texas Insurance Code, a group is a class of designated employees, of not less than 10 nor less than 75% of the eligible employees (excluding any employee as to whom evidence of individual insurability is not satisfactory to the insurer) of any association of state employees or employees of any department or agency of the state.

For the purposes of Article 3.51 of the Texas Insurance Code, a group may consist of any number of employees in excess of one, as determined by the contract between the department head and the insurer.

Policies of wholesale, franchise, or employee life insurance cannot be issued to state employees so as to authorize payroll deductions or the State to contribute premiums.

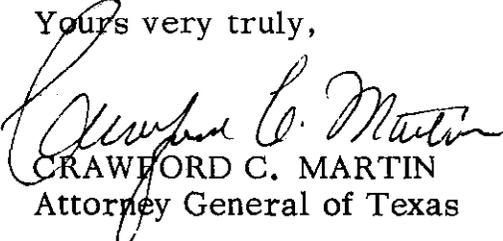
Neither a payroll deduction or a state contribution for premium payments can be made under Article 3.50 or Article 3.51 where an employee contracts for an insurance policy and the policy is issued to that employee.

Section 1, Subsection (3) and Sections 2 and 3 of Article 3.50 of the Texas Insurance Code are the only provisions that apply to group insurance for state employees which authorize payroll deductions and premium payments by the State for an employee for group life insurance.

The provisions of Subsection 2 of Article 3.51 of the Texas Insurance Code do not make the provisions of

Article 3.50 applicable to insurance for public employees
procured under Article 3.51.

Yours very truly,



CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by James Hackney
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
W. E. Allen, Co-Chairman

Jack Goodman
James Quick
Jim Swearingen
Bill Flanary

SAMUEL D. McDANIEL
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

NOLA WHITE
First Assistant