



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 16, 1988

Mr. Kenneth H. Ashworth
Commissioner
Coordinating Board
Texas College & University
System
P. O. Box 12788
Austin, Texas 78711

LO-88-55

Dear Commissioner Ashworth:

You ask what amount a junior college is required to contribute monthly in 1988 and 1989 for each employee or retiree toward group insurance premiums under Texas Insurance Code, article 3.50-3 (Texas State College and University Employees Uniform Insurance Benefits Act), in light of the gubernatorial veto of the item appropriating amounts for such benefits in the 1988-1989 appropriations act, Acts 1987, 70th Leg., 2nd C.S., ch. 78, art. III, § 1, p. 666.

We note at the outset that article 3.50-3 of the Insurance Code has been substantially amended since consideration of the provisions of Insurance Code article 3.50-3 in Attorney General Opinions MW-215 (1980) and JM-115 (1983). Section 2(b) of the act now declares that the act's purpose is to enable retention and attraction of competent employees by providing them with basic life, accident, and health insurance coverage "comparable," rather than "at least equal," to that provided in private industry or to state employees under the Texas Employees Uniform Group Insurance Benefits Act. Acts 1985, 69th Leg., ch. 141, § 1. Section 4(b)(4)(A) of the act now similarly provides that the administrative council shall determine basic coverage standards "comparable to," rather than "at least equal to," those in private industry and for state employees. Id., § 2.¹

1. The term "employee" as used in article 3.50-3 includes retirees. Id., sections 3(a)(2) and (4).

Section 11, prior to its amendment in 1985, provided that the employer contribution must fully cover the premium for basic coverage. That provision was deleted from section 11 in 1985 (Id., § 1) and language added providing a formula for calculating the respective contributions of the employer junior college and the employee toward the cost of basic coverage. The amended language also provides that "optional" coverage must be made available at no cost to the employee if the cost of "basic" coverage exceeds the amount the Legislature appropriated therefore.² Section 11 now reads:

No eligible employee shall be denied enrollment in any of the coverages provided by this Act; provided, however, that the employee may waive in writing any or all such coverages. Each policy of insurance shall provide for automatic coverage on the date the employee becomes eligible for insurance. From the first day of employment, each active full-time employee who has not waived basic coverage or selected optional coverages shall be protected by a basic plan of insurance coverage automatically. If the cost of an active employee's basic coverage exceeds the amount appropriated by the legislature for an employee, the institution must provide optional coverage at no cost to the employee. If the employee chooses the basic coverage rather than optional coverage, the institution may deduct from or reduce the monthly compensation of the employee up to one-half of the amount that exceeds the state's contribution for an employee, and the institution shall pay the difference. Each employee who is automatically covered under this section may subsequently retain or waive

2. "Optional coverage" is not defined in the act. However, section 3(b) of the act empowers the administrative council "to define by rule any words and terms necessary in the administration of this Act." It would appear that section 11, as amended, now requires the institution to offer "optional coverage" (necessarily a lower level of coverage than "basic coverage") at no cost to the employee, when the premium for "basic coverage" would be such that an employee contribution would be required to cover its costs, and that the standards of such "optional coverage" would be determined by the administrative council.

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the basic plan and may make application for any other coverages provided under this Act within institutional and administrative council standards.

It is clear from a reading of section 11, that where the employee chooses basic coverage, a deduction from his salary to cover the cost of the premium may not exceed one half the amount by which such premium exceeds the state's contribution for such employee. For example, if the state's contribution were zero, no more than one-half the cost of the monthly premium could be deducted from the employee's monthly salary. The balance of the cost of the premium would have to be paid for by the institution from other funds available to it.

A line item appropriation for staff insurance benefits for state junior colleges was included in the 1987 appropriations act for the 1988-1989 biennium. Acts 1987, 70th Leg., 2nd C.S., ch. 78, art. III, § 1, p. 666. This item was vetoed by the governor in his veto message of August 6, 1987 pursuant to the governor's constitutional veto power. Tex. Const. art. IV, § 14. Your question, then, is whether the governor's veto means that the state's contribution for purposes of section 11 of article 3.50-3 is zero.

The governor in his veto message stated that his intent was "not to eliminate group insurance premiums for staff" and that these premiums "should be paid through funds allocated to each individual school." Although the governor's veto power is purely negative and his message is without legal effect, Fulmore v. Lane, 140 S.W. 405, 412 (Tex. 1911), we think that another provision of the appropriations act does allow individual institutions to use appropriated funds to pay employee insurance premiums.

But the appropriations act itself makes further provisions regarding staff insurance premiums in article III, section 25, at page 999. Section 25 reads:

State institutions and agencies covered by this Article shall utilize funds other than those appropriated specifically for personal services to pay employee premiums on policies containing group life, health, accident, accidental death and dismemberment, disability income replacement and hospital, surgical and/or medical expense insurance. The dependents of an employee may be insured under that portion of the employee's group policy which provides for hospital, surgical

and/or medical expense insurance. The state's contribution per full-time individual employee covered by any policy or policies shall not be greater than \$100 per month for each month of the insurance contract year in fiscal 1988 and \$115 per month for each month of the insurance contract year in fiscal 1989. The method used to calculate the total yearly amount to be paid by the institutions and agencies covered by this Act shall be \$1,200 in fiscal 1988 and \$1,380 in fiscal 1989 times the number of employees actually covered under any policy or policies. It is further provided that agencies shall cooperate so that employees from more than one institution or agency may be combined under one group policy and that said policy may be held jointly by two or more institutions or agencies and paid from funds appropriated to the institutions or agencies for payment of employee insurance premiums as set out above. (Emphasis added.)

General Appropriations Act, Acts 1987, 70th Leg., 2d C.S., ch. 78, art. III, § 25, at 739.

In our opinion, the words in section 25 "the state contribution" have the same meaning as they have in section 11 of Insurance Code article 3.50-3 as set out previously -- i.e. the state's contribution is the amount appropriated by the legislature for staff insurance premiums.³ That the "state contribution" does not refer to the total amount to be contributed by the university toward premiums is evidenced by the distinction made in section 11 between the "state's contribution" and the "difference" to be paid by the institution.

It is further our opinion that the language in section 25 of the appropriations act, "the method used to calculate," refers to the method of calculating the total amounts to be paid by the employer institution toward the cost of premiums, including the amount appropriated by the legislature therefore and the "difference" to be paid by the institution under section 11. Therefore, pursuant to

3. Attorney General Opinion MW-215 (1980) reached the same conclusion as to the meaning of "the state's contribution" in a similar rider, section 25 of article IV of the 1980-1981 appropriations act.

article III, section 25, the figures of \$100 per month per full-time employee (or \$1200 per year) in 1988, and \$115 per month (or \$1380 per year) in 1989 are to be deemed the amounts appropriated by the legislature -- or "the state's contribution" -- for purposes of section 11 of Insurance Code article 3.50-3.

For example, applying the provisions of section 11 to the year 1988 by inserting the dollar amounts provided in article III, section 25 of the appropriations act, for that year, section 11 would read in relevant part:

If the cost of an active employee's basic coverage exceeds the amount appropriated by the legislature for an employee [of \$100 per month], the institution must provide optional coverage at no cost to the employee. If the employee chooses the basic coverage rather than optional coverage, the institution may deduct from or reduce the monthly compensation of the employee up to one-half of the amount that exceeds the state's contribution for an employee [of \$100 per month], and the institution shall pay the difference.

Further, since section 25 provides that the "state's contribution," that is, the appropriation by the legislature, may not exceed \$100 per employee per month in 1988 and \$115 per month in 1989, no more than those amounts may be expended from appropriated funds to cover the cost of premiums. Additional amounts, necessary to satisfy the requirement of section 11 that the institution pay the "difference," must be taken from non-appropriated funds.⁴

For example, if the cost of basic coverage for 1988 were in fact \$200 per month per full-time employee, the institution might reduce an employee's salary by up to one-half the amount that the premium cost exceeds the state appropriation of \$100, i.e., up to \$50, and the institution would have to pay the "difference," i.e. at least \$50. The "difference," moreover, in light of article III, section 25, of the appropriations act, would have to be paid from non-appropriated funds.

4. Note also that institutions making any expenditures for insurance premiums "shall utilize funds other than those specifically appropriated for personal services . . ." pursuant to the first sentence of article III, section 25 of the appropriations act.

A reading of section 12 of article 3.50-3, to which you refer in your request, does not alter the conclusions reached above. Section 12 requires that each institution contribute to the cost of premiums no less than the amount appropriated therefor in the appropriations act. Section 12, in effect, requires only that the total monthly contribution by the institution for insurance coverage be not less than \$100 in 1988 and \$115 in 1989 per employee, such dollar amounts being supplied under the direction of article 3, section 25 of the appropriations act.

To sum up, article III, section 25 of the appropriations act provides the dollar amounts to be deemed the state contribution, or appropriation by the legislature, for staff insurance premiums for purposes of sections 11 and 12 of Insurance Code Article 3.50-3. Section 25 further provides that no more than those dollar amounts may be taken from appropriated funds to cover the cost of premiums.

Section 12 provides that the total contribution by the institution, including money from appropriated and non-appropriated funds, must be at least equal to the state contribution, the dollar amounts of which are supplied by section 25 of the appropriations act.

No funds are required by these provisions to be expended from appropriated funds, but section 25 permits up to the amounts there listed to be taken from appropriated funds.

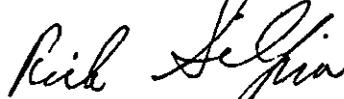
In any case, the institution must contribute from appropriated or non-appropriated funds the amounts of the "state's contribution" as derived from section 25, plus any "difference" required to make up the total that the institution must contribute under section 11.

You also ask what amounts state senior colleges would be required to contribute toward the cost of staff insurance premiums. There was no line item appropriation in the appropriations act for staff insurance premiums for senior colleges. Thus, senior colleges are in the same position as junior colleges for which there was no line item appropriation, in effect, in light of the governor's veto. Consequently, the extent of the obligation of senior colleges to contribute to staff insurance premiums is the same as that for junior colleges. Article III, section 25

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of the appropriations act and section 11 of Insurance Code article 3.50-3 govern their contribution obligation in the same manner as discussed above with respect to junior colleges.

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee

Prepared by William Walker
APPROVED: OPINION COMMITTEE

RG/bc

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