

## **N.D.A.G. Letter to Collins (Feb. 20, 1990)**

February 20, 1990

Mr. Sparb Collins  
Executive Director  
N.D. Public Employees  
Retirement System  
P.O. Box 1214  
Bismarck, ND 58502

Dear Mr. Collins:

Thank you for your December 14, 1989, letter in which you request my opinion as to the interpretation of N.D.C.C. § 54-52.1-03.1. The following issues were raised in your letter.

1. Whether any county, city, school district, or district health unit that has not withdrawn in the last 24 months from the uniform group insurance plan is eligible to enroll its employees anytime during the biennium.
2. In the event that a political subdivision may enter the uniform group insurance plan anytime during the biennium, whether the political subdivision's employees are required to provide evidence of insurability.

N.D.C.C. § 54-52.1-05 provides that the board may only enter uniform group insurance contracts which are "consistent with the provisions of" chapter 54-52.1. Additionally, where a contract has several distinct objectives, one which is lawful and one unlawful, in whole or in part, the contract is void as to the unlawful part and valid as to the lawful part. Schue v. Jacoby, 162 N.W.2d 377, 383 (N.D. 1968). Thus, the requirements of N.D.C.C. ch. 54-52.1 control any contrary contractual provisions contained in the uniform group insurance contract. In the event that the uniform group insurance contract does not specifically address the issues you raise, the provisions of N.D.C.C. ch. 54-52.1 are considered a part of the contract as though the contract expressly incorporated chapter 54-52.1. Storbeck v. Oriska School Dist. #13, 277 N.W.2d 130, 134 (N.D. 1979); Rettig v. Taylor Public School Dist. No. 3, 211 N.W.2d 743, 748, 749 (N.D. 1973).

N.D.C.C. § 54-52.1-03.1 provides:

The board of county commissioners of any county, the governing body of any city or school district, a district health unit, or any combination thereof, may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to a minimum period of participation of twenty-four months. If the board of county commissioners of a participating county, the governing body of any participating city or school district, a district health unit, or any combination thereof, withdraws from

participation in the uniform group insurance program, that entity may not subsequently renew Participation for a period of at least twenty-four months from the date of withdrawal. . . .

Other than the 24-month participation requirements, no time limitation is placed upon the political subdivision's decision to participate.

N.D.C.C. § 54-52.1-03 provides:

1. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department.
2. Within five days after the expiration of the payroll period during which enrollment was requested, the employing department shall enroll the employee with the board. The employee's insurance coverage becomes effective on the date of enrollment.

These sections authorize a political subdivision to offer "the benefits of the uniform group insurance program" to its employees. The "benefits" are those defined "in accordance with the uniform contract." N.D.C.C. § 54-52.1-01(6),(8). If a political subdivision satisfies the 24-month participation requirement of § 54-52.1-03.1, and the political subdivision has offered the benefits of the uniform group insurance program, "any eligible employee" requesting enrollment must be afforded coverage which becomes effective "on the date of enrollment."

No statutory provision requires an employee to provide evidence of insurability to obtain coverage. To the contrary, an employer's employing department must enroll the employee "[w]ithin five days after the expiration of the payroll period during which enrollment was requested." N.D.C.C. § 54-52.1-03(2). Consequently, the only condition imposed by § 54-52.1-03 is that an employee request enrollment. After the request is made the employee is covered under the group insurance plan from the date of enrollment.

In summary, political subdivisions may enter into the uniform group insurance plan at any time during the biennium and no evidence of insurability is required of their employees.

I hope that the above discussion sufficiently answers your question.

Sincerely,

Nicholas J. Spaeth

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