



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 11, 1975

Opinion No. 75- 64

Mr. V. James Sherer
Director of Admissions
Dodge City Community College
Dodge City, Kansas 67801

Dear Mr. Sherer:

In your letter of January 16, you requested an opinion on the legality of the action taken by the Board of Trustees of Dodge City Community College in paying the entire premium for full family membership in the Blue Cross and Blue Shield program as a fringe benefit to employees and whether employee contributions to the Kansas Public Employees Retirement System are deductible for purposes of State income tax.

In regard to this latter question, I have consulted with our expert in such matters and the conclusion is that contributions to KPERS are not deductible. The basis for this result is found in K.S.A. 79-32,120 which specifies the Kansas itemized deductions of resident individuals supporting this conclusion is that the money presently paid to KPERS, in actuality, is deferred compensation to the individual which the individual will later receive at a time when the income is more greatly needed. By paying the tax on these contributions when they are made, no tax liability is incurred when the employees contributions are returned in retirement benefits. I should advise you that there is presently pending litigation before the federal courts which might ultimately change this result. The gist of these cases are concerned with this basic theory; since FICA payments are actually deferred income which is realized only upon retirement, the income tax liability for that income should be deferred until the same time the income is received. The litigation on this point is expected to be quite protracted and therefore, any change is well in the future. Should the taxpayers prevail, FICA payments would be deductible from the federal income tax and the analogy to the KPERS payments would be quite clear. At present, the KPERS payments cannot be considered deductible for State income tax purposes.

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You further questioned if employees contributions to KPERS could be considered as employer contributions. There is no statutory provision which would authorize such treatment of employee contributions. Without a specific provision authorizing such treatment, employee contributions must be considered as simply that--employee contributions.

As to your initial question, K.S.A. 71-201 (6) confers upon the board of trustees of a community college, the power, in conjunction with the recommendations of the chief administrative officer, to appoint necessary employees and fix their compensation. This latter power, in regard to health and accident insurance, is more fully specified in K.S.A. 72-8414 which provides in pertinent part:

"The board of education of any school district or the board of trustees of any community junior college may procure contracts insuring its certificated employees and other employees or any class or classes thereof under a policy or policies of group life, group health, disability income, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance. The dependents of any such certificated employee or other employee may be insured under group policies which provide hospital, surgical and/or medical expense insurance. [Emphasis supplied.]


However, this power is limited by K.S.A. 72-8415 which states:

"Any school district or community junior college which is authorized by section 1 [72-8414] of this act to procure a contract insuring its certificated employees and other employees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or a portion of the premiums on such policies from the funds of such school district or community junior college. The amount paid by any such school district or community junior college shall not exceed an amount for each employee equal to the cost of a single person's premium.

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Accordingly, the board of trustees of a community junior college may provide for family coverage as an employee benefit under the Blue Cross-Blue Shield program but cannot authorize payment from the community college's funds for an employees' family beyond an amount equal to the cost of a single person's premium. The excess must be paid by the employee if he desires full family coverage.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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