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ATTORNEY GENERAL OPINION NO. 89-87

The Honorable Don Montgomery
State Senator, Twenty-First District
1218 Main
Sabetha, Kansas 66534-1835

Re: Schools -- Purchase of Insurance -- Group
Insurance; Distribution of Health Insurance Reserve
Refunds

Synopsis: A group health insurance divisible surplus fund results when yearly premiums exceed total claims, expenses, and reserves for the plan year. When the reserve is reduced to zero because it has been discontinued, the moneys refunded are to be distributed according to the divisible surplus rider.

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Dear Senator Montgomery:

As State Senator for the Twenty-first District, you have requested our opinion regarding the distribution of reserve refund moneys received by the school board for United School District No. 389 under the school's group health policy. Specifically, you ask whether the moneys must be returned to the employees who were insured through the group policy.

In Attorney General Opinion No. 81-97 the issue was raised whether group surplus health insurance refund monies refunded by the insurer were the property of the school board (contracting party) or the teachers (subscribers). We opined that the individual subscribers were entitled to these

divisible surplus refunds. However, had the policy contained a divisible surplus rider, the language of the rider would control the disposition of the refund. Our opinion was cited with approval in U.S.D. No. 259 v. Kansas-National Education Ass'n, 239 Kan. 76 (1986). The court held that a contractual provision which specifies the method of distributing a divisible surplus controls the distribution of the refund. 239 Kan. at 79-80.

A divisible yearly surplus refund and a reserve surplus refund are not identical. In American College of Surgeons v. Lumbermans Mutual Casualty Company, 491 N.E.2d 1179 (Ill. 1986), the court distinguished the two by defining a divisible yearly surplus as an excess reserve surplus which is "the amount remaining that is not considered necessary to pay present or expected claims." 491 N.E.2d at 1183. A claim reserve fund on the other hand was defined as "the portion of premium income which according to the insurance actuarial department, must be set aside to pay presently pending and future claims." 491 N.E.2d at 1183.

Stated another way, a divisible yearly surplus is the result of contract premium payments exceeding total claims, expenses and reserves for the year. U.S.D. No. 259 v. Kansas-National Education Ass'n, 239 Kan. 76, 81 (1986). The surplus increases as reserve needs decrease. The reserve fund was eliminated because eligibility for the divisible surplus rider terminated, and the accumulated reserves were refunded. This reserve is no longer needed to pay pending and future claims. As the reserve has been reduced to zero, we believe that the refund became divisible surplus, or, that amount resulting when premiums exceed claims, expenses and reserves. Accordingly, the moneys must be distributed per the contractual provisions regarding divisible surpluses.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford
Assistant Attorney General