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STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 66-7 (R-52)

REQUESTED BY: CHRISTOPHER T. JOHNSON,
State Representative

QUESTION: Is a School board authorized to appoint an agent or broker of record to represent various outside insurance companies relating to tax-sheltered annuities?

ANSWER: Yes, as qualified in body of opinion.

The tax-sheltered annuity is made available to school employees in the state of Arizona by virtue of Section 15-1198 A.R.S.

"A. Employees of the public schools and junior colleges under boards of trustees, accommodation school employees under the county superintendents, employees of the universities and state colleges under the board of regents, and all other certificated and non-certificated employees of the public schools of the state, including those located at state institutions, may participate in the federal tax sheltered annuity plan as provided by Title 26, section 403, U.S. Code, as amended, if the governing board approves.

"B. Upon election by any such employee to participate in the federal annuity plan, the board of trustees, county school superintendent, board of regents, or other

governing body or employer of the employee, shall invest an amount to be reduced from the regular annual salary of the employee, as the employee may authorize, in annuities as is provided by Title 26, section 403, U.S. Code, as amended. The amount to be invested shall be determined by the employee at the beginning of each school year. The employing board or county superintendent shall assume no responsibility other than to make the requested payments on the annuity during the actual time of the employment of the employee. If the employee changes his employment to another school or district, he may authorize his new employer to continue the annuity payments if the governing board approves. No state, county, district, or other public funds shall be used in the purchase of any annuity authorized by this article." (Emphasis supplied)

If a school district decides to make the annuities available to its employees the school district must purchase the annuity and pay the premiums for the employee. The premiums may be paid either by the employee taking a voluntary reduction in salary or by diversion of an increase in salary for this purpose, resulting in the employee bearing the cost of the premium.

In purchasing these annuities the school district may adopt a group plan or may purchase from separate insurance companies, however, it is apparent that the procedure could become cumbersome and confusing if the district dealt with multiple insurance carriers, or unless there was an agent or broker of record to represent the various insurance companies.

There is nothing in the statute which would prohibit the school district from making the payment to a broker or agent of record as a middle man between the school district and the insurance company. It would be necessary, however, that the agent secure a specific performance bond to guarantee payments so that all parties involved would have protection.

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Further, any commission or remuneration paid to the agent or broker of record would have to be borne by the insurance company and under no circumstances could this be paid by the school district or paid from the employee's salary. The statute provides, "No state, county, district or other public fund shall be used in the purchase of any annuity authorized by this article."

It would further be a discretionary matter with the school board as to whether or not they wish to handle the transaction through a broker or agent of record or whether they would prefer payments being made direct to the insurance company since the governing school board has the authority to approve the tax-sheltered annuity program.

Therefore, it is the opinion of the Attorney General that subject to the conditions stated above, the school board is authorized to appoint an agent or broker of record to represent various outside insurance companies relating to tax-sheltered annuities.

Respectfully submitted,



DARRELL F. SMITH
The Attorney General

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