

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

April 7, 1952

Opinion No. 52-98

WCS  
H/8/5 ✓  
Mr. Warren L. McCarthy  
Maricopa County Attorney  
Courthouse  
Phoenix, Arizona

Dear Warren:

We have your letter of April 1, 1952, wherein you ask this office for an opinion regarding a matter presented to you by the City of Mesa. The problem is one relative to the legality of the city's participation in a group insurance plan for its employees. We are advised that the insurance companies are unwilling to set up a group insurance program unless the employing city contributes. The following specific questions are asked:

"1. Can a city enter into a group insurance program which will be compulsory for all employees and under which the City can contribute directly?

2. In the event a large percentage of the City employees desire to enter into a group insurance program, can the City participate therein?

3. Can the City participate in such a program under the guise of giving the employees who desire to join a wage increase equal in amount to the City's contribution with a provision that the entire amount to be paid by the employees be then withheld from his wages by the City?

The programs in which the City employees are interested include comprehensive policies of health, hospitalization and life insurance provisions."

The rule has been stated to be as follows:

Mr. Warren L. McCarthy  
Maricopa County Attorney  
Phoenix, Arizona

April 7, 1952  
Op. No. 52-98  
Page two

" \* \* \* A municipality may not provide for life and accident insurance for its firemen by ordinance unless it is authorized so to do. On the other hand, it has the right to provide for the pensioning and relief of its firemen by means of accident or life insurance where appropriate legislation has empowered it so to do. \* \* \* " (62 C.J.S., Municipal Corporations, Section 614 (a), p. 1268)

The principle is firmly established in Arizona that municipal corporations have no rights, powers or privileges not expressly conferred upon them by law or reasonably implied from their express powers. Woodward vs. Fox West Coast Theaters, 36 Ariz. 251, 284 Pac. 350; Buntman vs. Phoenix, 32 Ariz. 18, 255 Pac. 490. Regarding charter cities, see Town of Holbrook vs. Nutting, 57 Ariz. 360, 114 Pac. 2d 226. The powers of cities operating in Arizona under a common council or city council are enumerated in Sections 16-207, ACA 1939 as amended and 16-221, ACA 1939; also see Section 16-210 and Section 16-601 enumerating the powers of cities and their common councils. It is clear that the statutes give no express powers to cities to participate in and expend public monies for a group insurance program for employees, nor do we believe that such power can be reasonably implied from the powers granted to such cities.

The authorities are in general agreement that an act empowering a municipality to contribute to premiums on group life and hospital insurance policies of officers or employees who desire to take out the insurance is not unconstitutional as an attempt to authorize the lending of credit or the granting of public money in aid of individuals. See McQuillin's Municipal Corporations, Third Edition, Volume 3, Section 12.173; 62 C.J.S., supra, and Opinion by the Justices, 249 Ala. 88, 30 So. 2d 14. In that case, the Alabama court held that the expenditure of public funds for such purposes was for a public and not a private purpose, and discussed many of the cases which have passed upon the matter. The court considered also the problem of increase of salaries of officers during

Mr. Warren L. McCarthy  
Maricopa County Attorney  
Phoenix, Arizona

April 7, 1952  
Op. No. 52-98  
Page three

their terms of office, indicating that the act would be construed as not applicable to such persons during the term in which the plan became effective. Also see State vs. City of Memphis, 251 S. W. 46.

Closely in point to the question raised is Frisbee vs. O'Connor, (Cal.) 7 Pac. 2d 316. It was there held that the City of Beverly Hills was without implied power to pass an ordinance providing for the creation and operation of an insurance plan and pension fund for employees of the city and to incur liability for insurance premiums. In the course of the opinion, it was stated:

■ \* \* \* The main question involved in this appeal is whether the city of Beverly Hills had the power to pass the ordinance and incur the liability in question. Conceding that the city had no express power to do so, appellant contends that it acted within its implied powers; but in our opinion this contention cannot be sustained. It is fundamental that a municipal corporation can exercise only such powers as have been conferred upon it by the Constitution, the general laws, or its own charter provisions (18 Cal. Jur. 798), and that the language purporting to define its powers must be strictly construed. 18 Cal. Jur. 801. \* \* \* The well-settled rule by which the powers of a municipal corporation are to be measured is stated in Dillon on Municipal Corporations (5th Ed.) Volume I, § 237, as follows: 'It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation - not simply convenient, but indispensable. Any

fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void.' Approval of this rule is found in a long line of decisions in this state. \* \* \* Measured by the foregoing principles, we are of the opinion that the city of Beverly Hills was without power, either express or implied, to pass an ordinance providing for an insurance plan and pension fund for its employees, and was without power to incur any liability under such ordinance for premiums upon policies issued thereunder to any of its employees. These powers were neither expressly conferred, nor were they among those 'necessarily or fairly implied in or incident to the powers expressly granted,' nor were they among those 'essential to the accomplishment of the declared objects and purposes of the corporation - not simply convenient but indispensable.' If it may be said that there is a 'fair, reasonable and substantial doubt' concerning the existence of the power, such doubt must be resolved against the existence thereof. \* \* \* The general laws of this state purport to create a 'police relief, health, and life insurance and pension fund in the several counties, cities and counties, cities and towns of the state' (Deering's Gen. Laws 1923 and Supp. 1927 Act 6012), and also a 'firemen's relief, health, and life insurance and pension fund in the several counties, cities and counties, cities, and towns of the state.' Deering's Gen. Laws, 1923, Act 2592. The ordinance in question is in direct conflict with these acts, in so far as it purports to

Mr. Warren L. McCarthy  
Maricopa County Attorney  
Phoenix, Arizona

April 7, 1952  
Op. No. 52-98  
Page five

substitute a new and different type of insurance and pension plan for employees of the police and fire departments in the place of that provided by general law. Again the very fact that the Legislature created such insurance and pension funds by the acts referred to and limited their application to employees of the police and fire departments strengthens the conclusion that it was not intended by the provisions of the Municipal Corporations Act to confer upon sixth-class cities the power to create such fund for any employees. \* \* \* " (Emphasis supplied)

A similar conclusion was reached in the case of Richards vs. Wheeler, (Cal.) P. 2d 433, wherein it was held that a municipality has the right by duly authorized legislation to provide for the pensioning and relief of its firemen and policemen by means of accident or life insurance, the cost of which is deemed to be a part of their compensation for services. The court went on to say, however, "It does not follow that a chartered municipality may provide for such insurance by ordinance unless it is authorized so to do." The court applied the well-recognized rules and construed the language of the charter strictly holding that the particular charter provision in question did not expressly nor by necessary implication authorize the adoption of an ordinance creating an obligation to pay death benefits to the beneficiaries of city employees.

The Arizona Legislature has heretofore seen fit to provide by general statute for the creation of both police and firemen's pension or retirement plans. Similarly, the Legislature enacted specific statutes providing for a teachers' retirement system and a public employees' retirement system, the latter containing provisions for voluntary participation by municipalities. (See Article 8, Chapter 12, ACA 1939, Initiative Measure 1948) It appears that the Legislature has concluded that these and related subjects are matters of state legislation only.

Mr. Warren L. McCarthy  
Maricopa County Attorney  
Phoenix, Arizona

April 7, 1952  
Op. No. 52-98  
Page six

We are constrained to conclude that both questions 1 and 2 above set out must be answered in the negative and that a city may not engage in such a group insurance program for its employees to which the city would contribute without specific statutory authorization. No such authorization presently exists.

Your question number 3 requires, we believe, a similar answer. Thus, the city could not undertake to do indirectly what it cannot legally do directly. We do not pass upon the question of what rights the employees of the city might have to voluntarily and in a bona fide manner enter into group insurance coverage on their own, without the expenditure of public funds. The matter of salaries and wages to be paid city employees is primarily the concern of the city, having in mind the provision of the Arizona Constitution (Article 4, Part 2, Section 17) prohibiting the increase of compensation of any public officer during his term of office.

We trust the foregoing will be of some assistance to you.

Very truly yours,

FRED O. WILSON  
Attorney General

RICHARD C. BRINEY  
Assistant Attorney General

RCB:d  
Carbon copy to Mr. J. Lamar Shelley  
City Attorney  
Mesa, Arizona