



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

R75-627

BRUCE E. BABBITT
ATTORNEY GENERAL

April 14, 1976

76-103

Mr. Michael L. Altman
Professor Of Law
Arizona State University
College of Law
Tempe, Arizona 85281

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ARIZONA ATTORNEY GENERAL

Dear Mike:

I'm sorry for the long runaround in response to a fairly simple question. The enclosed letter, drafted by Pete Gulatto, probably won't satisfy you, but short of going into the problem myself which isn't likely in the near future, it's about the best I can do.

Needless to say, I apologize for the long delay. I hope we'll have a chance to discuss criminal justice one of these days.

Sincerely,

Bruce E. Babbitt
Attorney General

BEB:cl
Enclosure





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BRUCE E. BABBITT
ATTORNEY GENERAL

March 31, 1976

Mr. Michael L. Altman
Professor of Law
Arizona State University
College of Law
Tempe, Arizona 85281

Re: State Employees' Health Insurance

Dear Mr. Altman:

By your letter of November 14, 1974, and subsequent letters of June 9 and November 4, 1975, you have questioned the legality of the State Personnel Board's decision to require that the \$15 per month which can be paid by the State toward employees' group health insurance premiums can only be paid for the employees' coverage and cannot be applied to dependent coverage. You state that where spouses are both employed by the State of Arizona, refusal to apply one \$15 to one employee's primary coverage and the other employee's \$15 allowance to dependent's coverage in your opinion constitutes a violation of the equal protection clause of the Fourteenth Amendment.

The state employees' group health insurance program is authorized by A.R.S. § 38-651, which authorizes the State Personnel Board, successor to the Personnel Commission referenced in the statute, to expend appropriated funds to procure health and accident coverage for fulltime officers and employees of the state, its departments and agencies. The statute further gives the Board the authority to adopt the standards for and designate the qualifying plans of insurance and to establish eligibility for participation. The statute specifically provides "[p]ublic funds so appropriated shall not exceed fifteen dollars monthly per officer or employee who receives such coverage." It does not appear from the statute that the Legislature intended under any construction to pay for dependent coverage. Indeed, providing dependent coverage for employees' expense is a service being provided by the Personnel Board which is not required by the statute.

Pursuant to A.R.S. § 38-653, the Personnel Board adopted rules and regulations, appearing as Personnel Board Rule R2-5-52 governing employees' health insurance programs. Paragraph F.1 and 2 of the rule provides as follows:



Mr. Michael L. Altman
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Provisions for Appropriations and Premiums:

1. Money appropriated by the State may be used only to pay for insurance coverage on the employee of the State. In the event the premium for an employee is less than the amount appropriated by the State, none of the excess appropriation shall be credited to family benefits coverage of the said employee, nor paid directly or indirectly to said employee.
2. In situations where the husband and his spouse are both qualified fulltime employees, "employee" policy must be taken by each individual employee to qualify for the money appropriated by the State for each employee. Where both husband and wife are State employees, and children are covered under the Plan of one spouse, the other spouse shall be included as a dependent and shall not carry an individual plan.

The rule appears to be fully within the scope of authority delegated to the Board by the Legislature and appears to be a reasonable classification of eligible participants. This is especially true when considering information furnished me by the Personnel Division which indicates that the actual quotes which were received from the insurance companies on a two-level or three-level dependent coverage would substantially increase the cost of the premiums to employees with more than one dependent and would not, in their opinion, be providing the best insurance coverage for employees. This factor was made known to the Board by the staff and was one of the factors included in the Board's determination to establish a two-level rather than a three-level coverage.

I am aware that you have spoken to an insurance professor who disagrees, however, I cannot believe that his investigation was as thorough as that of the Personnel Board.

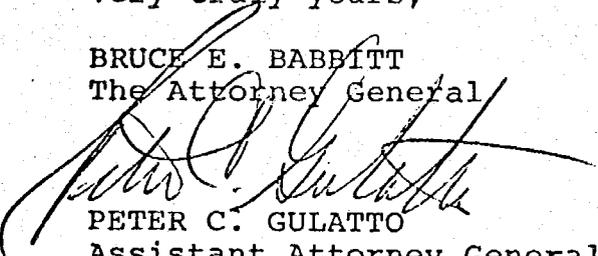
With reference to your equal protection clause argument, which was not fully expounded, I do not think it appropriate that I pursue forensic debate with you on the issue at this time. However, I must observe that the Personnel Board has a right to rely on a presumption of constitutionality of the procedures and plans which have been adopted. The insurance plans which were certified were not and cannot be conceived to operate to the best individual advantage of an individual employee but must be adopted to provide

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the best coverage for employees generally. Absent some specific judicial direction to the contrary, I do not believe that the Personnel Board should alter the rules on employees' health insurance programs.

Very truly yours,

BRUCE E. BABBITT
The Attorney General



PETER C. GULATTO
Assistant Attorney General

PCG:mp