



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

McDougal
R 76-258
BRUCE E. BABBITT
ATTORNEY GENERAL
76-288

September 14, 1976

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ARIZONA ATTORNEY GENERAL

Mr. J. N. Trimble, Director
Arizona Department of Insurance
1601 West Jefferson
Phoenix, Arizona 85007

Dear Mr. Trimble:

You requested an opinion on May 24, 1976 on whether the Mohave County Employees Benefit Plan is subject to the approval of the Director of Insurance, subject to the supervision of the Director's office, or subject to the Arizona statutes pertaining to insurance.

Counties have only those powers which expressly or by necessary implication have been delegated to them by the Legislature. Maricopa County v. Black, 19 Ariz.App. 239, 473 P.2d 812 (1973). Counties have authority to adopt a system of insurance benefits for their employees. A.R.S. § 11-263 authorizes a board of supervisors, in effecting such a system, to procure health, life, accident and disability insurance from an insurer licensed to do business in Arizona and to expend public funds for the payment of premiums therefor. However, A.R.S. § 11-263 is no authority for a board of supervisors to establish and operate a health care plan such as the "Mohave County Employees Benefit Plan" under which a board of supervisors or its agents enroll members, settle claims and pay public funds directly to health care providers for services rendered to county employees.

We have considered also the question whether the Mohave County Employees Benefit Plan constitutes a deferred compensation plan within the meaning of Title 26 of the United States Code (the Internal Revenue Code) inasmuch as A.R.S. § 11-251.33 authorizes counties to provide such tax deferred annuity and deferred compensation plans for their employees as are authorized in said Title 26. In our view, health care plans of the type under consideration here do not fall within the scope of the deferred compensation provisions of Title 26 of the



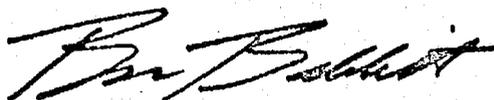
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United States Code. The only reference to health plans in the deferred compensation provisions in Title 26 is found in 26 U.S.C. § 401(h) which permits a pension or annuity plan to provide medical benefits for retired employees that are subordinate to the retirement benefits provided by the pension or annuity plan. The Mohave County Employees Benefit Plan has nothing whatever to do with pension or annuity plans, but rather is confined solely to medical benefits for active employees of the county.

The actions taken or proposed to be taken by Mohave County to provide health care benefits to county employees, other than through an insurance system as authorized in A.R.S. § 11-263, are in our opinion, void for want of the requisite statutory authority.

Very truly yours,



BRUCE E. BABBITT
Attorney General

BEB:b
cc: Mohave County Attorney