

March 3, 2000
OPINION NUMBER 00-22

Mr. Thomas D. Benoit
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Board of Trustees
State Employees Group Benefits Program
P. O. Box 44036, Capitol Station
Baton Rouge, LA 70804

54 INSURANCE
97 SCHOOLS & SCHOOL DISTRICTS - Property,
 Contracts
La. R. S. 42:881; La. R. S. 42:851 (A)(5)(b)(iii)

La. R. S. 42:881 is controlling statute on the issue of risk
rated premiums for school boards.

Dear Mr. Benoit:

We received your request for an opinion concerning the application of La. R. S. 42:851(A)(5)(b)(iii) and 42:881, which address risk-rated premiums, to school boards.

La. R. S. 42:851(A)(5)(b)(iii) provides that the Board of Trustees of the State Employees Group Benefits Program may charge a higher premium rate for school boards which elect to participate in the State Group Health and Accident Insurance Program after participating in another group health and accident program. The Board adopted and promulgated a rule to this effect which limited such risk rating to one year.

La. R. S. 42:881 was enacted in 1992. This statute provides that, "Notwithstanding any other provision of law to the contrary...", if 50 percent or more of the employees of "an entity" which initially becomes a participant on or after July 1, 1993 elect to participate in a health maintenance organization, the remaining employees of the entity who participate in the plan shall be charged a premium rate. As stated in your request, the Board never promulgated this statute as a final rule. The question then becomes whether La. R. S. 42:881 supersedes La. R. S. 42:851(A)(5)(b)(iii).

We do not believe that because La. R. S. 42:881 refers to an "entity" rather than expressly referring to a school board that it does not apply to a school board. A school board is a political subdivision of the state. An entity is nothing more than that which exists independently. Clearly, a school board is an entity and would be included in the statute. Also, the fact that the Board never promulgated a rule which encompassed La. R. S. 42:881 does not make the statute inapplicable. On the contrary, the "law" is the solemn expression of the legislative will. **Wood v. Wood**, 424 So.2d 1143 (La. App. 1st Cir. 1982).

While we recognize that the two statutes are somewhat ambiguous to the extent that one refers to school boards and the other entities, La. R. S. 42:881 specifically states ***notwithstanding any other provisions of law to the contrary***. Further, after reviewing

the legislative history of both statutes, we note that the Board opposed and /or questioned the legislation at various committee meetings. The Board initiated promulgation of a rule to encompass La. R. S. 42:881 and abolish the one year risk rated rule which indicates it viewed La. R. S. 42:881, at least at that point, as overriding La. R. S. 42:851(A)(5)(b)(iii).

Therefore, it is our opinion that La. R. S. 42:881 is controlling on the issue of risk rated premiums, specifically for school boards. As such, the Board may only charge a higher premium for those entities/school boards which become a participant on or after July 1, 1993 and have more than 50 percent of its employees electing to participate in an HMO. Please see Atty. Gen. Op. 00-44 which also addresses this very same issue.

We trust that this adequately responds to your request. If you have any questions or comments, please do not hesitate to contact our office. With kindest regards,

Yours very truly,

RICHARD P. IEYOUNG
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BY:

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RPI:TVG:jv

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Board of Trustees

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