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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION NO. 85-7

January 8, 1985

Honorable Bobby L. Hogue
State Representative
P. O. Box 97
Jonesboro, Arkansas 72401

Re: Municipal Corporations/
Ark. Stat. Ann. §81-212

Dear Representative Hogue:

This is in response to your request for an opinion concerning the applicability of Ark. Stat. Ann. §81-212 to Municipal Corporations.

Ark. Stat. Ann. §81-212 provides as follows:

It shall be unlawful for any person, partnership, association or corporation, either for himself, herself or itself, or in a representative or fiduciary capacity, to require any employee or applicant for employment, as a condition of employment or continued employment, to submit to, or take a physical or medical examination without providing such examination at no cost therefor to such employee or applicant for employment, or without furnishing free of charge to such employee or applicant for employee[employment] a true and correct copy, either original or duplicate original, of the examiner's report of such examination. It shall further be unlawful for any such person, partnership, association or corporation to require any employee or applicant for employment to pay, either directly or indirectly, any part of the cost of any such examination, report or copy of report.

While there is no law which makes the provision applicable to municipal corporations, a review of Act 171 of 1951, which is the enactment from which the statute was compiled, particularly Section 3 leads us to the conclusion that the answer to your questions is yes.

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Section 3 of the Act which is the emergency clause states that it is:

unequitable and unjust to place [thē] financial expense [of medical examinations] upon the applicant since the benefit from such examination flows substantially to [the employer].

We are unaware of any enactment which would entitle a municipal corporation to avoid the general law and an announced policy of the State.

The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Robert R. Ross.

Yours truly,


STEVE CLARK
Attorney General

SC:RRR:dc