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January 8, 2015

ESTABLISHED 1911

D. LOGAN GIFFIN
(1890-1980)

MONTGOMERY S. WINNING
(1892-1966)

C. TERRY LINDNER
(1903-1987)

ALFRED F. NEWKIRK
(1904-1980)

JAMES M. WINNING
(1921-2013)

Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

RE: Health Insurance

Dear Mike:

You have asked us to identify the source or authority for a county board under township organization to make its members, county wide elected officials, and contract employees (department heads) eligible for health care benefits equal to that of its full-time employees.

Section 5-1069 of the Counties Code provides counties the authority to provide health, and other types of insurance, for the benefit of employees of the county.¹ Section 5-1069(e) provides that “[t]he term ‘employees’ as used in this Section includes elected or appointed officials but does not include temporary employees.”²

It should be noted that Article VII, Section 9(b) of the Illinois Constitution states “[a]n increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.”³ The Illinois Attorney General has opined that “the provision of health insurance constitutes an increase in salary in violation of the constitutional prohibition, if action to provide those benefits is required during the term for which the officer is elected.”⁴

A copy of both section 5-1069 and Illinois Attorney General Opinion No. 94-022 are attached to this letter for your convenience.

¹ 55 ILCS 5/5-1069.

² 55 ILCS 5/5-1069(e).

³ Illinois Const., Art. VII, § 9(b).

⁴ Ill. Att’y Gen. Opinion No. 94-022 (October 25, 1994).

Mr. Michael McCreery

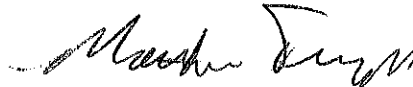
January 8, 2015

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Please feel free to call if you should have any questions.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Matthew R. Trapp



Herman G. Bodewes

MRT/HGB/lrg
Attachments

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

(55 ILCS 5/5-1069) (from Ch. 34, par. 5-1069)

Sec. 5-1069. Group life, health, accident, hospital, and medical insurance.

(a) The county board of any county may arrange to provide, for the benefit of employees of the county, group life, health, accident, hospital, and medical insurance, or any one or any combination of those types of insurance, or the county board may self-insure, for the benefit of its employees, all or a portion of the employees' group life, health, accident, hospital, and medical insurance, or any one or any combination of those types of insurance, including a combination of self-insurance and other types of insurance authorized by this Section, provided that the county board complies with all other requirements of this Section. The insurance may include provision for employees who rely on treatment by prayer or spiritual means alone for healing in accordance with the tenets and practice of a well recognized religious denomination. The county board may provide for payment by the county of a portion or all of the premium or charge for the insurance with the employee paying the balance of the premium or charge, if any. If the county board undertakes a plan under which the county pays only a portion of the premium or charge, the county board shall provide for withholding and deducting from the compensation of those employees who consent to join the plan the balance of the premium or charge for the insurance.

(b) If the county board does not provide for self-insurance or for a plan under which the county pays a portion or all of the premium or charge for a group insurance plan, the county board may provide for withholding and deducting from the compensation of those employees who consent thereto the total premium or charge for any group life, health, accident, hospital, and medical insurance.

(c) The county board may exercise the powers granted in this Section only if it provides for self-insurance or, where it makes arrangements to provide group insurance through an insurance carrier, if the kinds of group insurance are obtained from an insurance company authorized to do business in the State of Illinois. The county board may enact an ordinance prescribing the method of operation of the insurance program.

(d) If a county, including a home rule county, is a self-insurer for purposes of providing health insurance coverage for its employees, the insurance coverage shall include screening by low-dose mammography for all women 35 years of age or older for the presence of occult breast cancer unless the county elects to provide mammograms itself under Section 5-1069.1. The coverage shall be as follows:

- (1) A baseline mammogram for women 35 to 39 years of age.
- (2) An annual mammogram for women 40 years of age or older.
- (3) A mammogram at the age and intervals considered medically necessary by the woman's health care provider for women under 40 years of age and having a family history of breast cancer, prior personal history of breast cancer, positive genetic testing, or other risk factors.
- (4) A comprehensive ultrasound screening of an entire

breast or breasts if a mammogram demonstrates heterogeneous or dense breast tissue, when medically necessary as determined by a physician licensed to practice medicine in all of its branches.

For purposes of this subsection, "low-dose mammography" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including the x-ray tube, filter, compression device, and image receptor, with an average radiation exposure delivery of less than one rad per breast for 2 views of an average size breast. The term also includes digital mammography.

(d-5) Coverage as described by subsection (d) shall be provided at no cost to the insured and shall not be applied to an annual or lifetime maximum benefit.

(d-10) When health care services are available through contracted providers and a person does not comply with plan provisions specific to the use of contracted providers, the requirements of subsection (d-5) are not applicable. When a person does not comply with plan provisions specific to the use of contracted providers, plan provisions specific to the use of non-contracted providers must be applied without distinction for coverage required by this Section and shall be at least as favorable as for other radiological examinations covered by the policy or contract.

(d-15) If a county, including a home rule county, is a self-insurer for purposes of providing health insurance coverage for its employees, the insurance coverage shall include mastectomy coverage, which includes coverage for prosthetic devices or reconstructive surgery incident to the mastectomy. Coverage for breast reconstruction in connection with a mastectomy shall include:

- (1) reconstruction of the breast upon which the mastectomy has been performed;
- (2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and
- (3) prostheses and treatment for physical complications at all stages of mastectomy, including lymphedemas.

Care shall be determined in consultation with the attending physician and the patient. The offered coverage for prosthetic devices and reconstructive surgery shall be subject to the deductible and coinsurance conditions applied to the mastectomy, and all other terms and conditions applicable to other benefits. When a mastectomy is performed and there is no evidence of malignancy then the offered coverage may be limited to the provision of prosthetic devices and reconstructive surgery to within 2 years after the date of the mastectomy. As used in this Section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons, as determined by a licensed physician.

A county, including a home rule county, that is a self-insurer for purposes of providing health insurance coverage for its employees, may not penalize or reduce or limit the reimbursement of an attending provider or provide incentives (monetary or otherwise) to an attending provider to induce the provider to provide care to an insured in a manner inconsistent with this Section.

(d-20) The requirement that mammograms be included in health insurance coverage as provided in subsections (d) through (d-15) is an exclusive power and function of the State

and is a denial and limitation under Article VII, Section 6, subsection (h) of the Illinois Constitution of home rule county powers. A home rule county to which subsections (d) through (d-15) apply must comply with every provision of those subsections.

(e) The term "employees" as used in this Section includes elected or appointed officials but does not include temporary employees.

(f) The county board may, by ordinance, arrange to provide group life, health, accident, hospital, and medical insurance, or any one or a combination of those types of insurance, under this Section to retired former employees and retired former elected or appointed officials of the county.

(g) Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(Source: P.A. 95-1045, eff. 3-27-09.)



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

October 25, 1994

FILE NO. 94-022

COMPENSATION:
Addition of Health Insurance Coverage
During Officer's Term of Office

Honorable Doug Floski
State's Attorney, Ogle County
Ogle County Courthouse
Oregon, Illinois 61061-0395

Dear Mr. Floski:

I have your letter wherein you inquire whether the provision of health insurance benefits to an elected township officer, when coverage becomes effective during the officer's current term of office, is violative of article VII, section 9(b) of the Illinois Constitution (Ill. Const. 1970, art. VII, sec. 9(b)). For the reasons hereinafter stated, it is my opinion that the provision of health insurance benefits constitutes an increase in salary in violation of the constitutional prohibition, if action to provide those benefits is required during the term for which the officer is elected.

Honorable Doug Floski - 2.

Article VII, section 9(b) of the Constitution provides:

" * * *

(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

Although this issue has not been addressed judicially in Illinois, courts in other jurisdictions have applied similar limits on mid-term salary increases to fringe benefits. Thus, in State ex rel. Parsons v. Ferguson (S. Ct. Ohio 1976), 348 N.E.2d 692, the court was asked whether an analogous provision of the Ohio Constitution prohibited an elected county officer from receiving the benefits of a health insurance plan which was purchased from public funds after the commencement of the term for which he was elected. The court concluded that the benefits of the insurance plan in question could not be granted to the county official during his current term of office, stating:

" * * *

Fringe benefits, such as the payments made here, are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check. It is obvious that an office holder is benefited and enriched by having his insurance bill paid out of public funds, just as he would be if the payment were made directly to him; and only then transmitted to the insurance company. Such payments for fringe benefits may not constitute 'salary,' in the strictest

Honorable Doug Floski - 3.

sense of that word, but they are compensation.

* * *

State ex rel. Parsons v. Ferguson (S. Ct. Ohio 1976), 348 N.E.2d 692, 694.

The term "salary" in article VII, section 9(b) of the Constitution, is synonymous with "compensation" (see, e.g., Harlan v. Sweet (1990), 139 Ill. 2d 390, 395; Cummings v. Smith (1938), 368 Ill. 94; Cook County v. Healey (1906), 222 Ill. 310, 316; Marion County v. Lear (1884), 108 Ill. 343, 350-51; Windmiller v. People (1898), 78 Ill. App. 273, 276), and fringe benefits are clearly a part of an officer's compensation. In my opinion, the reasoning of State ex rel. Parsons v. Ferguson is persuasive, and a similar conclusion must therefore be reached in applying article VII, section 9(b) of the Illinois Constitution to fringe benefits provided to officers of units of local government in Illinois. Consequently, since the provision of township funded group health insurance to a township officer constitutes additional compensation for the officer, coverage generally may not be initiated during the current term of office of the incumbent officers without violating the Constitution.

It must be noted, however, that mid-term changes in the compensation of elected officers of units of local government are not flatly prohibited by the Constitution. Rather, the key issue is whether action is required during the term of office to effec-

Honorable Doug Floski - 4.

tuate the change. Thus, in opinion No. S-777, issued June 18, 1974 (1974 Ill. Att'y Gen. Op. 184), Attorney General Scott concluded that the salary of a county official could be increased or decreased if the basis upon which the changes would be made is established prior to the beginning of the official's current term of office, and if the factors which would trigger the change in compensation (for example, a change in population or a rise or fall in a cost of living index) are fixed in advance and require no further action. In contrast, if an increase or decrease in compensation is dependent upon subjective factors, and requires further action during the term of office to become effective, the change would be prohibited by article VII, section 9(b) of the Constitution. See 1975 Ill. Att'y Gen. Op. 318, 321.

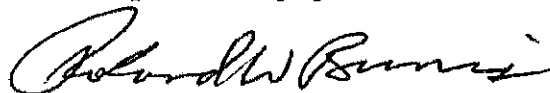
Consequently, the determination of whether the provision of fringe benefits constitutes an impermissible increase in salary depends upon the specific circumstances relating thereto. If, for example, the town board elects to furnish insurance coverage to township officers prior to their election to their current term of office, it may do so if no further action is required, even though coverage may not become effective until after the commencement of the term. In contrast, if the board makes no final determination to provide benefits prior to the commencement of the current term of office, or if additional action would be necessary to complete the transaction, then

Honorable Doug Floski - 5.

coverage could not lawfully take effect until the beginning of the succeeding term of office.

You have also inquired whether you, as State's Attorney, may seek a remedy on behalf of the citizens of the township to redress the wrongful provision of benefits. It appears that you may institute a quo warranto action against the township pursuant to article 18 of the Code of Civil Procedure (735 ILCS 5/18-101 et seq. (West 1992)), for the purpose of prohibiting the township from continuing to make payments for which it lacks constitutional authority. It has been held that quo warranto lies to prohibit a municipality from exercising powers granted by an unconstitutional statute. (People v. City of Chicago (1952), 413 Ill. 83, 86.) It would likewise appear to be an appropriate method for prohibiting a township from making payments pursuant to an unconstitutional resolution.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL