



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.

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

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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-

tuates 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

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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 black ink, appearing to read "Roland W. Burris". The signature is written in a cursive style with a large initial "R".

ROLAND W. BURRIS
ATTORNEY GENERAL