



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Linda K. Breathitt
Commissioner

September 25, 2013

Ms. Wanda Simmons Smith
Laurel County Water District No. 2
3910 South Laurel Road
London, Kentucky 40744

PSC STAFF OPINION 2013-012

Re: Laurel County Water District No. 2
Health Insurance Benefits for Commissioners

Dear Ms. Smith:

Commission Staff acknowledges receipt of your letter of August 23, 2013 in which you request on behalf of Laurel County Water District No. 2 ("Laurel District") an opinion as to whether the water district may provide health insurance coverage to the members of its Board of Commissioners. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Public Service Commission should the issues be formally presented for Commission resolution.

Commission Staff understands the facts as follows:

Laurel District, a water district organized pursuant to KRS Chapter 74, provides water service to 5,898 customers in Knox and Laurel counties, Kentucky.¹

Laurel District is governed by a five-member board of commissioners. Each commissioner is currently paid an annual salary of \$3,600. The County Judge/Executive and Fiscal Court of Laurel County have approved this salary level.²

¹ *Annual Report of Laurel County Water District No. 2 to the Kentucky Public Service Commission for the Year Ended December 31, 2012*, at 5, 27.

² As less than 25 percent of Laurel District's distribution facilities are located in Knox County, Knox County officials have no role in the appointment of members to Laurel District's Board of Commissioners or the establishment of the level of their annual salary.

Laurel District currently provides health insurance coverage to its employees and their family members at no cost, but not to the members of its board of commissioners. Its Board of Commissioners now wishes to extend the same coverage to its members. The coverage would be the same level of coverage as the water district currently provides to its employees. Laurel County Fiscal Court has previously approved an annual salary of \$3,600 for each member of Laurel District's Board of Commissioners.

Your letter presents the following questions:

1. May Laurel District provide health insurance coverage to the members of its board of commissioners?
2. If health insurance coverage is provided to the members of its board of commissioners, would the cost of such coverage be considered salary and be subject the limits set forth in KRS 74.020?

As to the first question, water districts are authorized to provide health insurance coverage to the members of their board of commissioners. KRS 79.080(3) provides:

Cities of all classes, counties, charter counties, urban-county governments, the agencies of cities, counties, charter counties, and urban-county governments, and all other political subdivisions of the state **may provide disability, hospitalization, or other health or medical care coverage to their officers and employees**, including their elected officers, through independent or cooperative self-insurance programs and may cooperatively purchase the coverages.

Water districts are political subdivisions of the state. See, e.g., *Public Service Commission of Kentucky v. Dewitt Water District*, 720, S.W.2d 725, 727 (Ky. 1986); *Davis v. Powell's Valley Water District*, 920 S.W.2d 75, 77 (Ky.App. 1995); *Northern Kentucky Area Planning Com'n v. Cloyd*, 332 S.W.3d 91, 94 (Ky.App. 2010). The members of a water district's board of commissioners are officers. See, e.g., *Com. v. Howard*, 379 S.W.2d 475, 476 (Ky. 1964).

As to the second question, the provision of health insurance coverage is not generally considered compensation and therefore is not subject to constitutional or statutory salary limitations. In *Caldwell County Fiscal Court v. Paris*, 945 S.W.2d 952, 954 (Ky.App. 1997), the Kentucky Court of Appeals held that providing health insurance under a group policy does not constitute "compensation" or "salary" to public officials as the terms are used in the Kentucky Constitution or statutes. Compensation or salary meant "the actual salary or fees paid to an officer." *Id.*

The Court of Appeals, however, warned that the provision of insurance coverage could in some instances be considered salary. It noted:

[W]e are not holding that the payment of a “fringe benefit” to a public official can never amount to “compensation” under the constitution. If, for example, some scheme were devised to raise the salary of a particular official through the subterfuge of paying certain benefits for him not uniformly available to similarly situated officials, that scheme would not likely pass constitutional muster.

Id.

Based upon the stated facts presented to us, Commission Staff is of the opinion that Laurel District’s provision of health or medical care insurance coverage to the members of its Board of Commissioners would not be considered as salary for the purposes of KRS 74.020(6).³ Laurel District does not propose to discriminate in the provision of health care insurance by providing the members of its Board of Commissioners with a more generous coverage, but proposes to extend to its commissioners the same coverage currently provided to all other employees.

When considering any extension of health insurance coverage, Laurel District’s Board of Commissioners should proceed with caution. KRS 74.020(3) provides:

A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007 or 74.455.

Extension of health insurance coverage to the members of Laurel District’s Board of Commissioners represents a direct financial benefit to each member of the Board. Any vote to extend coverage to current members, therefore, will subject any commissioner voting in favor of extension subject to possible removal. Accordingly, Laurel District’s Board of Commissioners may wish to consider making any extension of coverage applicable only to members who are appointed or reappointed after the date of the proposed extension.

³ KRS 74.020(6) provides in relevant part:

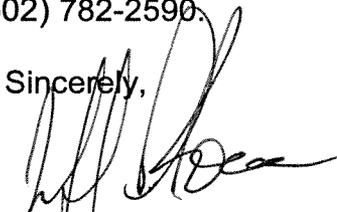
Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund, except that beginning January 1, 1999, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund.

Wanda Simmons Smith
September 25, 2013
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In summary, Laurel District's Board of Commissioners may extend health insurance coverage to its members. So long as the coverage provided does not exceed the coverage provided to other Laurel District employees, the health insurance coverage will not be subject to the salary limitations set forth in KRS 74.020(6). Any extension of such coverage, however, should only be taken after consultation with legal counsel and consideration of the restrictions set forth in KRS 74.020(3). For your reference, I have enclosed a copy of KRS 74.020 and the *Caldwell County Fiscal Court* decision.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. Questions concerning this opinion should be directed to Gerald Wuetcher, Executive Advisor/Attorney, at (502) 782-2590.

Sincerely,



Jeff Derouen
Executive Director

Enclosures

74.020 Appointment of commissioners -- Number -- Terms -- Removal -- Vacancies -- Organization -- Bond -- Compensation -- Mandatory training -- Notice of vacancy.

- (1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:
 - (a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court.
 - (b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in one (1) or more adjacent counties, as provided by KRS 74.115, the board of commissioners shall be appointed by the appropriate county judges/executive, with the approval of the respective fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the respective fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.
 - (c) If a district acquires an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into one (1) or more additional counties, or if a district extends its area to include territory in one (1) or more adjacent counties as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, without adding additional board members, if the new area to be served shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within any particular county included in the territorial boundaries of the district, it shall be conclusively presumed, with respect to that particular county, that the district comes within the terms of this subsection.
- (2) A commissioner may be removed from office as provided by KRS 65.007 or 74.455.
- (3) A commissioner who participates in any official action by the water district

board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007 or 74.455.

- (4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.
- (5) The commission shall elect a chairman, vice chairman, secretary, treasurer, and any other officers and assistant officers as the commission may deem necessary, each of whom shall be members of the commission. Any two (2) or more offices may be held by the same person, except that the chairman may not hold any other office. Each commissioner shall execute a bond for the faithful performance of the duties of his position.
- (6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund, except that beginning January 1, 1999, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund. An educational year shall begin on January 1 and end on the following December 31. In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.
- (7)
 - (a) In order to receive an increase in salary as specified in subsection (6) of this section, commissioners shall successfully complete six (6) instructional hours of water district management training annually. The training shall be approved and paid for by the water district of the county the commissioner represents. Those commissioners not required to complete the six (6) instructional hours shall be reimbursed for the cost of instruction if they choose to complete the water district training.
 - (b) The Public Service Commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions.
 - (c) The Public Service Commission shall encourage and promote the offering of high quality water district management training programs that enhance a water district commissioner's understanding of his or her responsibilities and duties. The commission shall, no later than January 1, 1999,

establish standards and procedures to evaluate, accredit, and approve water district management training programs.

- (8) (a) At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.
- (b) Within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. Any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. A commissioner required to attend a program under this subsection shall be reimbursed for the cost of instruction by his or her water district.
- (9) (a) Within thirty (30) days of the occurrence of a vacancy on its board of commissioners resulting from the expiration of a term or the death, resignation, or removal of the incumbent, a water district shall notify in writing the Public Service Commission of the existence of the vacancy. The notice shall include the name of the commissioner who last held the position and the date on which the unexpired term will end.
- (b) Within thirty (30) days of the appointment of a commissioner and the appropriate fiscal court's approval of that appointment, a water district shall notify the Public Service Commission of the appointment. The notice shall include the appointed person's name and the date of the expiration of his or her term.
- (10) The Public Service Commission may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 18, sec. 1, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 6, sec. 3, effective July 15, 2008. -- Amended 1998 Ky. Acts ch. 76, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 236, sec. 1, effective April 4, 1996. -- Amended 1994 Ky. Acts ch. 298, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 310, sec. 1, effective July 14, 1992; and ch. 388, sec. 3, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 307, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 330, sec. 9, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 18, sec. 4, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 384, sec. 181, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 257, sec. 1. -- Amended 1974 Ky. Acts ch. 309, sec. 1. -- Amended 1970 Ky. Acts ch. 218, sec. 1. -- Amended 1966 Ky. Acts ch. 170, sec. 1; and ch. 255, sec. 88. -- Amended 1962 Ky. Acts ch. 218, sec. 1. -- Amended 1958 Ky. Acts ch. 174, sec. 1. -- Amended 1952 Ky. Acts ch. 12, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 928g-2, 938g-4.

945 S.W.2d 952
Court of Appeals of Kentucky.

CALDWELL COUNTY FISCAL COURT; Van Knight, Judge Executive; Nicky Baker, Member; Linda Oliver, Member; Richard Capps, Member; Phillip Thomas, Member; Johnny Stone, Member; Charles Tinsley, Member; Ted Martin, Member; and George Kilgore, Member, Appellants,

v.

William Ralph PARIS, Caldwell County Surveyor, Appellee.

No. 95-CA-3154-MR. | May 30, 1997.

County surveyor brought action, alleging that his health insurance benefits amounted to compensation for purposes of State Constitution and that benefits could not be discontinued as that would amount to change in his compensation during his term of office. The Caldwell Circuit Court, Bill Cunningham, J., ruled that health insurance premiums paid by county were compensation within meaning of State Constitution, and appeal was taken. The Court of Appeals, Wilhoit, C.J., held that providing health insurance under group policy covering county officials and employees does not constitute payment of compensation for purposes of state constitutional articles providing that compensation of any public officer shall not be changed after his election.

Reversed and remanded.

West Headnotes (2)

[1] Counties

↔ Compensation

Counties

↔ Salaries and Commissions

Providing health insurance under group policy covering county officials and employees does not constitute payment of "compensation" or "salary" to those officials for purposes of state constitutional articles providing that compensation of any public officer shall not be changed after his election and setting forth

maximum annual compensation which may be paid to public officers. Const. §§ 161, 235, 246.

1 Cases that cite this headnote

[2] Officers and Public Employees

↔ Increase or Reduction of Compensation

Payment of fringe benefit to public official may amount to "compensation" within meaning of state constitutional articles providing that compensation of any public officer shall not be changed after his election and setting forth maximum annual compensation which may be paid to such officer; for example, if scheme was devised to raise salary of official through subterfuge of paying certain benefits for him not uniformly available to similarly situated officials, that scheme would not likely pass constitutional muster. Const. §§ 161, 235, 246.

1 Cases that cite this headnote

Attorneys and Law Firms

*953 James S. Miller, Caldwell County Attorney, Princeton, for Appellants.

William E. Scent, Owensboro, for Appellee.

Before WILHOIT, C.J., and BUCKINGHAM and GUIDUGLI, JJ.

Opinion

OPINION

WILHOIT, Chief Judge.

This appeal is from the order of the Caldwell Circuit Court determining that the health insurance benefits provided by the appellants to the appellee constituted "compensation" for purposes of Section 161 of the Kentucky Constitution and concluding that the Caldwell County Fiscal Court (Fiscal Court) could not provide or deny those health benefits during the term of the appellee's office.

The appellee was appointed to the position of Caldwell County Surveyor in 1977 and has served consecutive four-

year terms of office by election since that time. When the appellee entered office in 1990, he and the Caldwell County Fiscal Court agreed he would be compensated solely by fees. Apparently, the maximum compensation he could receive has never been set. *See* KRS 64.530(3) and 64.630. In November 1992, the Fiscal Court began providing health insurance to the appellee under a group policy covering county employees and officials. This insurance continued to be provided during the remainder of that term of office and into the following term which began in 1994. The appellee was notified that the coverage would end as of June 15, 1994, because the county had changed insurance carriers. Under its new group health insurance policy, only officials and employees who worked at least 30 hours each week were insurable.

The appellee brought this action, complaining that the health insurance benefits in question amounted to “compensation” for purposes of the Kentucky Constitution, so they could not be discontinued as that would amount to a change in his compensation during his term of office. He asked that the Fiscal Court either be required to provide him health insurance benefits for the remainder of his term or that it be required to pay him \$122.12 per month, the cost of his health insurance, for the remainder of his term in office.

***954** The trial court held that the health insurance premiums paid by the county were “compensation” under Section 161 of the Kentucky Constitution. It ruled that discontinuance of the coverage violated that section’s prohibition against changing an official’s “compensation” during his term in office. Consistent with this holding, the court concluded that the Fiscal Court’s act of providing health insurance benefits in 1992 offended the same constitutional provision. It ordered that the appellee reimburse the county for premiums paid on his behalf in his previous term of office, but that the county either obtain health insurance on behalf of the appellee or pay him \$122.12 per month for the remainder of his current term in office. This appeal followed.

Section 161 of the Constitution of Kentucky provides as follows:

The compensation of any city, county, town or municipal officer shall not be changed after his election or appointment, or during his term of office; nor shall the term of any such officer be extended beyond the period

for which he may have been elected or appointed.

Similarly, Section 235 of the constitution specifies that

[t]he salaries of public officers shall not be changed during the terms for which they were elected; but it shall be the duty of the General Assembly to regulate, by a general law, in what cases and what deductions shall be made for neglect of official duties. This section shall apply to members of the General Assembly also.

[1] A reading of the cases interpreting these sections of the constitution, as well as Section 246 which sets the maximum annual compensation which may be paid to public officers, convinces us that providing health insurance under a group policy covering county officials and employees does not constitute the payment of “compensation” or “salary” to those officials within the meaning of those terms as found in Sections 161, 235, and 246 of the Kentucky Constitution.

The authors and ratifiers of our present constitution could not possibly have envisioned what in our century has become the commonplace practice of employers furnishing benefits to employees over and above their salaries and wages. These benefits, which include such things as retirement plans, health and disability insurance, and even life insurance, are commonly known as “fringe benefits.” While these benefits certainly cost the employer, they are not considered to affect the pay, wages, or compensation of the employee but are considered an additional benefit. Even though the decisions of the former Court of Appeals are not entirely consistent, *compare Manning v. Sims*, 308 Ky. 587, 213 S.W.2d 577 (1948) with *Noland v. Estill Cty.*, 304 Ky. 870, 202 S.W.2d 376 (1947), they leave little doubt that the judicial branch of government has long considered the constitution’s reference to “compensation” and “salary” to mean the actual salary or fees paid to an officer. *See Dennis v. Rich*, Ky., 434 S.W.2d 632 (1968); *Cook v. Chilton*, Ky., 390 S.W.2d 656 (1965); *Weber v. True*, 304 Ky. 681, 202 S.W.2d 174 (1947).

Likewise, the two other branches of our government have so interpreted the constitution. Over the years, the legislative branch has passed statutes and budgets prepared by the executive branch and, approved by them, have provided public officials with “fringe benefits” such as health and life insurance and payments into retirement systems, while

at the same time providing for those same officials an annual salary equal to the maximum amount of compensation permitted under Section 246 of the constitution as interpreted by *Matthews v. Allen*, Ky., 360 S.W.2d 135 (1962). See, e.g., KRS 64.480; 64.485; 18A.210 and 18A.225.

If the “fringe benefits” paid to such public officials amounted to “compensation” in the constitutional sense, then the annual compensation of every public official who received the maximum salary permitted under Section 246 would have to be reduced by the value of the “fringe” benefits received each year. For this court to embark upon a new interpretation of the constitution in the face of that so long accepted by all branches of our government would not only be irresponsible, but jurisprudentially unwarranted. That also would be a sure prescription for fiscal *955 chaos at both the state and local levels of government.

[2] It should be understood that we are not holding that the payment of a “fringe benefit” to a public official can

never amount to “compensation” under the constitution. If, for example, some scheme were devised to raise the salary of a particular official through the subterfuge of paying certain benefits for him not uniformly available to similarly situated officials, that scheme would not likely pass constitutional muster. That is not the situation now before us. Here we are dealing with a fringe benefit which initially was provided to county officials and employees regardless of the time they spent in service to the county, and later was limited to those who spent at least 30 hours each week in service to the county. The provisions of health insurance to this group plainly was not a scheme to change the appellee's compensation during the two terms in question.

The order of the circuit court is reversed and this matter is remanded to that court for entry of an order dismissing the appellee's claim.

All concur.