



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 9, 1998

The Honorable Glenn F. McConnell
Senator, District No. 41
311 Gressette Building
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator McConnell:

Attorney General Condon has forwarded your recent opinion request to me for reply. You have informed this Office that the legislation which created the Charleston County Parks and Recreation Commission (hereinafter "PRC") includes a prohibition against any commissioner receiving compensation for their service as such. A commissioner has asked you whether this legislation would prohibit the commissioners from participating in a group insurance plan in which they would pay all the costs. It is my understanding that the commissioners would participate in the group insurance plan provided to the employees of the PRC. You have asked whether this type of insurance arrangement would be a form of compensation and, thus, prohibited by the enabling legislation.

The PRC was created by Act No. 1595 of 1972. Section 4 of the Act provides in pertinent part that no member of the commission shall receive any compensation for his services as a member of the commission.

The term "compensation" when employed in reference to the remuneration of public officers means pay for doing all that may be required of the official, whether it is in the form of a fixed salary, or fees, or commissions, or perquisites of whatsoever character. 63A Am.Jur.2d Public Officers and Employees § 431. In addition, the term perquisite when used in connection with a public office means some emolument or profit beyond the salary payable to him. Fringe benefits, such as the payment of group medical

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and hospital plans, are valuable prerequisites of an office, and are as much a part of the compensations of office as a weekly pay check; such payments for fringe benefits may not constitute "salary," in the strictest sense of the word, but they are compensation. 63A Am.Jur.2d Public Officers and Employees § 450; Op. Atty. Gen. dated August 5, 1988.

I have been unable to locate any South Carolina case law or prior opinions of this Office regarding whether mere access to a group insurance plan would be considered compensation. I have, however, located an opinion of the Arkansas Attorney General on a similar question. Ark. Op. Atty. Gen. No. 95-061.

In the Arkansas situation, the law provided that "[n]o justice of the peace shall receive compensation as a county employee or deputy, nor shall any justice receive compensation or expenses from funds appropriated by the quorum court for any services performed within the county." The question presented was "[i]f the quorum court elects to treat themselves as employees for the purpose of receiving hospital insurance benefits under a county personnel policy, would it make a difference if the quorum court members paid for their benefits without any financial cost to the county?" The Arkansas Attorney General was concerned that even though the quorum court members would be paying for their benefits without any financial cost to the county, the members may still be viewed as receiving a form of compensation, although perhaps indirectly. The Attorney General concluded that the quorum court members would benefit from their inclusion in the employees plan and, thus, be afforded a form of compensation in violation of the law.

In my opinion, if a court in South Carolina were to address this question, it is likely that they would find that the access to the PRC's group insurance plan would constitute a form of compensation, despite the fact that the commissioners would pay the entire cost of the insurance with no cost to the PRC. While it is arguable that the commissioners may not be receiving a direct benefit, at a minimum, they are receiving an indirect benefit. If an individual commissioner sought insurance outside of the individual's capacity as commissioner (as a private citizen), it is likely that the rates would be higher than those of the PRC's group plan. Thus, by purchasing insurance through the group plan, the commissioner would be saving money on the insurance premium. The commissioner would be receiving a benefit that he would not normally be entitled to as a private citizen. This, I believe, a court would find to be compensation and, therefore, prohibited by the enabling legislation.

I note that there is another option available to the commissioners. In the years following the passage of Act No. 1595, the General Assembly adopted Section 6-11-91 of the South Carolina Code of Laws. This section provides:

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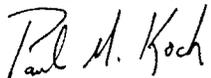
The governing body of a public service district or special purpose district by resolution or ordinance may fix or change the compensation or other benefits, including insurance benefits and per diem for the members of the district governing body. Reimbursable expenses actually incurred while on official business may not exceed the amounts authorized for members of state boards, committees, and commissions, and insurance benefits shall not exceed those provided for state employees.

This Office has previously opined that this statute is applicable to special purpose districts created by act of the General Assembly. Op. Atty. Gen. dated June 8, 1990. By virtue of this statute, the commissioners may elect to continue following the terms of Act 1595, or they may adopt another compensation plan in accordance with Section 6-11-91 of the Code, by resolution or ordinance. Included in an adopted compensation plan may be insurance benefits that do not exceed those provided for state employees. Therefore, to avoid a potential legal action concerning whether access to the group insurance plan would constitute compensation, the commissioners may wish to adopt a compensation plan pursuant to Section 6-11-91 of the Code. Of course, this opinion should not be construed as a recommendation either for or against such a plan.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General