



ALAN WILSON  
ATTORNEY GENERAL

January 23, 2014

Lisa R. Claxton, Esquire  
Spartanburg County Attorney  
P.O. Box 5666  
Spartanburg, S.C. 29304

Dear Ms. Claxton,

You seek an opinion of this Office as to whether Spartanburg County (the "County") may cease providing insurance benefits to members of the County Election Commission and the County Board of Registration when the County transitions from its current insurance plan to the South Carolina Public Employee Benefit Authority's (PEBA) insurance benefits program. By way of background, you state:

[The] County is transitioning all employee benefits from the County's current self-funded insurance plan for employee benefits to the PEBA benefits program. The transition will be completed effective January 1, 2014. At that time, the County's benefits plans and programs will cease.

Currently, Registration & Elections Commission board members who are not County employees but do receive some compensation from the County are eligible to participate in the County's self-funded insurance plan. These individuals are classified as board/commissioners (as opposed to employees). The PEBA benefits program does not offer coverage for governing boards such as the Registration and Elections Commission.

After further discussion, it is our understanding the term of each member or commissioner expires on March 15, 2014. With this information in mind, you specifically ask whether "there is any statute or other governing authority that would prohibit the County from ceasing to offer Registration & Elections Commission board members insurance benefits?"

#### Law/Analysis

S.C. Code § 7-27-415 provides that "[t]he Spartanburg County Election Commission and the Spartanburg County Board of Registration must have their members appointed and powers of their board and commission as provided by Sections 7-5-10 and 7-13-70." Members of the County Board of Registration are appointed to two year terms each even-numbered year by the Governor with the advice and consent of the Senate. §§ 7-5-10(A), -30. Members of the County Election Commission are appointed at least ninety days before an election by the Governor upon the recommendation of the County's senatorial delegation and at least one-half of the County's Representatives. § 7-13-70(A).

The compensation of members of county election commissions and boards of registration is typically set forth in a proviso in the annual appropriations act which, for at least the past several years, has provided:

The amounts appropriated in this section for "County Registration Board Members and County Election Commissioners," shall be disbursed annually to the County Treasurer at the rate of \$ 1,500 for each member, not to exceed \$ 12,500 per county. The County Treasurer shall use these funds only for the compensation of County Registration Board Members and County Election Commissioners. Any funds not used for this purpose shall be returned to the State Treasurer....

2013-2014 Appropriation Act, Part 1B § 100.1; 2012-2013 Appropriation Act, Part 1B § 79.1; see also § 7-5-40 ("Each county shall receive an annual supplement from the State to help defray the expenses of personnel in keeping the registration office open"); § 7-23-10 ("Each commissioner of state and county general elections shall receive as expenses an amount as appropriated in the annual state general appropriations act, payable quarterly, and is entitled to election-day mileage as provided by law for state employees").

With the above in mind, the question presented is essentially whether the County may effectively decrease the overall amount of compensation provided members of the County's Registration Board and Election Commission by ceasing to make payments on their behalf to the County's insurance program. As to the compensation of public officers in general, § 8-15-10 states:

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of the State or any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

§ 8-15-10.

Generally, the compensation of a public officer may be changed by proper authority during his or her term in the absence of constitutional or statutory prohibitions or limitations to the contrary. See, e.g., 62 C.J.S. Municipal Corporations § 490 ("In the absence of any prohibition or restriction, the compensation of a municipal officer may be changed by the proper authorities, and such change may apply to officers then in office as well as to those thereafter selected"); 67 C.J.S. Officers § 396 ("In the absence of a constitutional inhibition, the compensation of public officers ... may be changed even during their term of office"); 63C Am. Jur. 2d Public Officers and Employees § 285 ("The legislative or other body which creates a public office has the power, except as otherwise prohibited by some constitutional provision, to alter the compensation for such office whenever it may choose to do so").

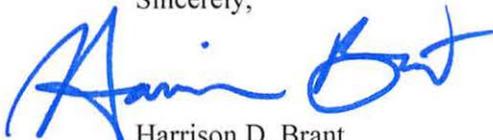
In South Carolina, constitutional and statutory provisions prohibit changes or reductions in the salary or compensation of certain public officers during the terms they were elected or appointed to serve. See, e.g., S.C. Const. Art. VI, § 7 (providing for election and terms of constitutional officers and stating "their compensation shall be neither increased nor diminished during the period for which they shall have been elected"); § 4-9-30(7) (stating, with regards to powers of county government, "[t]he salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected"); § 8-21-300 (providing salaries of county clerks of court and registers of deeds "shall not be diminished during their term of office"); § 22-1-10(A) ("Each magistrate's ... compensation ... must

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remain the same throughout the term of office"); § 22-2-40(C) ("a magistrate's compensation must not be decreased during his term in office").

Here, the Legislature has fixed the compensation of each member of the County's Registration Board and Election Commission at \$1,500 annually. We are unaware of any constitutional or statutory provision which obligates the County to provide these officers with insurance benefits in addition to the compensation set forth by the Legislature.<sup>1</sup> Nor are we aware of any constitutional or statutory provision expressly prohibiting the County from ceasing to provide these officers with such supplemental benefits during the terms to which they were appointed. Accordingly, in the absence of any promise to continue providing members of the County's Registration Board and Election Commission such insurance benefits through the expiration of their terms<sup>2</sup> – whether by ordinance, resolution, contract, agreement, or otherwise – we do not believe State law prohibits the County from effectively decreasing the overall compensation of such officers by ceasing to make payments on their behalf to the County's insurance program. Thus, we believe the question of whether to continue or cease providing these officers with such insurance benefits is a policy matter to be determined within the sound discretion of the County Council.<sup>3</sup>

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

<sup>1</sup> We note that the granting of extra compensation to a public officer in addition to that which the officer is legally entitled is unconstitutional. See S.C. Const. Art. III, § 30 ("The General Assembly shall never grant extra compensation, fee or allowance to any public officer ... after service rendered, ... nor authorize payment or part payment of any claim under any contract not authorized by law"); see also § 4-11-170 ("No member of the governing body of any county shall vote for an extra allowance to any person who is paid by salary"). However, we have advised that payments made by a public body on behalf of its officers and/or employees toward premiums for a group health insurance plan in which the public body participates are generally permissible under State law and do not constitute "extra compensation" for purposes of S.C. Const. Art. III, § 30. See, e.g., Op. S.C. Att'y Gen., 2013 WL 3762704 (July 8, 2013).

<sup>2</sup> See, e.g., 63C Am. Jur. 2d Public Officers and Employees § 265 ("there is some authority for the view that promised compensation creates a contractual right which, once vested, cannot be eliminated without unconstitutionally impairing the contract obligation").

<sup>3</sup> We note that the prudence of any such policy decision is a matter beyond the scope of an opinion of this Office. See, e.g., Op. S.C. Att'y Gen., 2013 WL 6699948 (Dec. 10, 2013) (stating this Office generally defers to a county governing body's determination as to how it should handle discretionary matters and will not attempt to micromanage the county's affairs); 2011 WL 2214062 (May 11, 2011) ("When rendering opinions, this Office may not give a view regarding policy decisions"); 1992 WL 575683 (June 26, 1992) (stating this Office only addresses legal questions and will make no comment "as to policy matters or as to the wisdom of the undertaking").