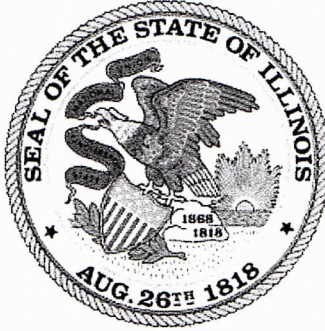


**State's Attorney**  
Jesse Danley

**Victim Services**  
Shannon M. Hill  
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**Paralegal**  
Ronda J. Parker

To: The Coles County Board  
From: Jesse Danley, State's Attorney  
Date: April 9, 2019  
Re: County Insurance

Based upon the continued concerns of certain citizens that a resolution by the County Board is necessary to extend employee health insurance benefits to Elected County Board Members, I provide the following detailed response:

A resolution is not necessary. There is no unsettled matter of law in regards to the fringe benefit of county funded health insurance being available to elected County Board Members once it is initiated for employees. However, based upon Article VII §9 of the Illinois Constitution elected officials' coverage must initiate during the election cycle subsequent to coverage being provided to employees.

The Illinois Constitution at Article VII, §9 states in totality:

**SECTION 9. SALARIES AND FEES**

(a) Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes.

(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. (Source: Illinois Constitution.)

For example, in Illinois Supreme Court case of *Harlan v. Sweet*, County treasurers sued, inter alia, Director of Revenue, seeking a declaration that they were entitled to receive stipends pursuant to an act which became effective after the date that treasurers were elected. The Circuit Court, Sangamon County, Simon L. Friedman, J., granted defendants' motion for summary judgment, and treasurers appealed. The Supreme Court held that the annual stipend for Illinois county treasurers was not available to those treasurers elected before the effective date of the act providing for that stipend. *Harlan v. Sweet*, 139 Ill. 2d 390, 564 N.E.2d 1192 (1990.)

Likewise, Attorney General Roland Burris Opined: 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 Art. VII, § 9(b) of the Illinois Constitution (Ill. Const. 1970, Art. VII, § 9(b)). 1994 Op.Atty.Gen. No. 94-022., 1994 WL 601861

### **Powers and Duties of County Boards**

The provision of extending group life, health, accident, hospital, and medical insurance is granted to the county board at 55 ILCS 5/5-1069.

§ 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. 55 ILCS 5/5-1069

## **Definition of Employee**

The definition of employee for purposes of the power of the County Board to provide insurance benefits is found at 55 ILCS 5/5-1069(e) as follows:

(e) The term "employees" as used in this Section includes elected or appointed officials but does not include temporary employees. 55 Ill. Comp. Stat. Ann. 5/5-1069

## **Extend to retired employees and retired former elected or appointed officials.**

The statute further provides at 55/ ILCS 5/5-1069(f) that coverage may be extended to retired employees however a resolution or ordinance is necessary.

(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. 55 ILCS 5/5-1069

## **Coles County**

The Coles County Board made arrangements to provide health insurance for the benefit of employees of the county pursuant to 55 ILCS 5/5-1069 Effective December 1, 1977. (See attached Minutes marked as Exhibit A).

There is a presumption that the elected county board members who arranged to provide the health insurance plan in 1977 did not initiate coverage to elected officials until the subsequent election cycle in compliance with Article VII §9 of the Illinois Constitution.

All current county board members were elected subsequent to the medical insurance provisions for employees.

The statute is unambiguous. It excludes temporary employees but specifically includes elected officials.



**A Resolution would be necessary to EXCLUDE the county board members from the health insurance plan.**

Although the courts are not bound by an attorney general opinion we do gain insight from those opinions.

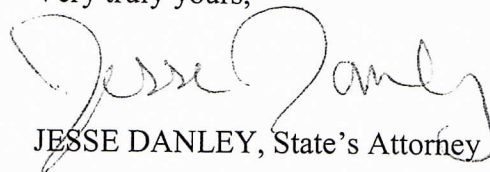
“Well-reasoned opinions of the Attorney General interpreting or construing a statute are persuasive authority and are entitled to considerable weight in resolving a question of first impression, although they do not have the force and effect of law.” *Vine St. Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 856 N.E.2d 422 (2006)

Attorney General James Ryan drafted an opinion in a case where township officials sought to exclude themselves from the insurance benefits which acted to decrease the compensation of aldermen. The Attorney General opined that they could not decrease the salary of the officials during their term in office but could do so by ordinance to take effect the following election cycle but by doing so they would, “\*\*\*in effect, redefine the term “employee” for the purposes of the city’s self-funded group health plan.”\*\*\* (1996 Op. Atty.Gen. No. 96-039).

Based upon the above, it is my opinion no action is necessary on the part of the Coles County Board for elected County Board Members to continue to utilize the employee health insurance benefits.

Further, I elect to address the questions posed in Mr. Kraft’s letter to the County Board as an attachment hereto.

Very truly yours,

  
JESSE DANLEY, State’s Attorney

WHEREAS, the term of Mrs. Catharine Smith will expire as a member of the Coles County Regional Planning Commission on December 31, 1977; and

WHEREAS, the Coles County Regional Planning Commission at their September 29, 1977 meeting resolved to request the reappointment of Mrs. Catharine Smith to serve a three year term to end December 31, 1981.

NOW THEREFORE BE IT RESOLVED THAT THE CHAIRMAN OF THE COLES COUNTY BOARD HEREBY APPOINTS MRS. CATHARINE SMITH TO A THREE YEAR TERM WITH THE COLES COUNTY REGIONAL PLANNING COMMISSION AND THE COLES COUNTY BOARD HEREBY CONFIRMS SUCH APPOINTMENT.

Upon motion by Mr. Meyerholtz, seconded by Mrs. Record, the foregoing resolution was adopted by the following record vote:

AYES: Unanimous (12)

NAYES: None (0)

#### APPOINTMENT TO THE COLES COUNTY REGIONAL PLANNING COMMISSION

WHEREAS, the enabling legislation of the Coles County Regional Planning Commission grants the power of appointment of "at large members" to the County Board Chairman subject to confirmation by the County Board; and

WHEREAS, the term of Mr. Clarence Centers will expire as a member of the Coles County Regional Planning Commission on December 31, 1977; and

WHEREAS, the Coles County Regional Planning Commission at their September 29, 1977 meeting resolved to request the appointment of Mr. Lester Lee to serve a three year term to end December 31, 1981.

NOW THEREFORE, BE IT RESOLVED THAT THE CHAIRMAN OF THE COLES COUNTY BOARD HEREBY APPOINTS MR. LESTER LEE TO A THREE YEAR TERM WITH THE COLES COUNTY REGIONAL PLANNING COMMISSION AND THE COLES COUNTY BOARD HEREBY CONFIRMS SUCH APPOINTMENT.

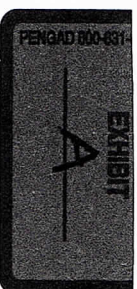
Upon motion by Mr. Ingram, seconded by Mr. Meyerholtz, the foregoing resolution was adopted by the following record vote:

AYES: Bauer, Bennett, Degler, Ingram, Meyerholtz, Moore, Neal, Record, Winkleblack, Leigh (10)

NAYES: Janssen, Moler (2)

#### HEALTH INSURANCE PROGRAM PRESENTATION

At the request of Mr. Meyerholtz, representatives of the Metropolitan Life Insurance Company presented the program adopted for Coles County Employees by the Building and Grounds Committee for Group Health and Life Insurance. Said coverage to become effective to County Employees December 1, 1977.



State of Illinois       )  
                                  )  
County of Coles        )

RESOLUTION RE: COUNTY OFFICERS SALARY

WHEREAS, the Coles County Board is required pursuant to P. A. 89-0405 to fix the salaries of various Coles County Officials 180 days before the term of office begins; and

WHEREAS, this salary will be included in the appropriation of the Coles County Budget.

NOW, THEREFORE BE IT RESOLVED that the Coles County Board set the annual salary for the County Officials as follows:

County Board Members

2002 - 2012   \$ 4,800 annual salary

BE IT FURTHER RESOLVED that the Coles County Board set the annual salary for the County Board Chairman, in addition to the above stated annual salary, as follows:

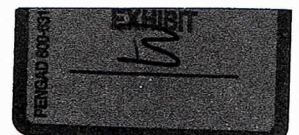
County Board Chairman

2002 - 2012   \$ 1,200 annual salary

DATED this 14<sup>th</sup> day of May, 2008.

ATTEST:

St. Julie Coe Clerk





**PAGES 2&3 OF 6**

Mr. Kraft states the following:

**Health insurance is compensation and it is not referenced in the compensation setting resolution adopted by the County Board.**

**The Counties Code, Section 4-10001**, provides that the board sets the compensation of the board members.

*Sec. 4-10001. County board members. County board members elected pursuant to Division 2-3 shall receive such compensation as is fixed by the county board in accordance with "the method of compensation" selected by the county board. Such compensation shall be set before the general election at which county board members are elected. The chairman of the county board shall receive such additional compensation as determined by the county board in reapportioning the county. County board members and the chairman of the county board are also entitled to travel and expense allowances as determined by the county board.*

**Health insurance is compensation and it is not referenced in the compensation setting resolution adopted by the County Board.**

**COUNTY BOARD CAN CHANGE THE FIXED METHOD OF COMPENSATION**

**The Counties Code**, Section 2-3008, states that during reapportionment the county board selects the method of compensation, and if they want to change the method selected after reapportionment years, they must do so by Resolution or Ordinance, and can only change the method of compensation for board members, not for the chairman.

**METHOD OF COMPENSATION.**

Pursuant to 55 ILCS 5/2-3008. When a County is reapportioned the county board determines the "method of compensation" whether per diem basis, annual basis or combined per diem and annual basis, and shall "fix the amount of salary".

§ 2-3008. Determination of **method of compensation** (*emphasis added*) of members of county board. At the time it reapportions its county under this Division, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis, on an annual basis or on a combined per diem and annual basis, and shall **fix the amount of that salary**.(*emphasis added*) If the county board desires before the next reapportionment to change the basis of payment or amount of compensation after fixing those items, it may do so by ordinance or by resolution. Those changes shall not however, take effect during the term for which an incumbent county board member has been elected. In addition, the county board shall determine the amount of any additional compensation for the chairman of the county board. The county board may adjust that additional compensation at any time adjustments in the salary of board members may be made. Those adjustments shall not however, take effect during the term for which the incumbent chairman of the county board has been elected. 55 Ill. Comp. Stat. Ann. 5/2-3008

Act 5 Article 4 Division 4-10 COUNTY BOARD MEMBERS' SALARIES

§ 4-10001. County board members. County board members elected pursuant to Division 2-3 shall receive such compensation as is fixed by the county board in accordance with the method of compensation selected by the county board. Such compensation shall be set before the general election at which county board members are elected. The chairman of the county board shall receive such additional compensation as determined by the county board in reapportioning the county.

County board members and the chairman of the county board are also entitled to travel and expense allowances as determined by the county board. 55 Ill. Comp. Stat. Ann. 5/4-10001

In the case of Coles County the "method of compensation" is an annual basis being paid monthly. (See Resolution Re: County Officers Salary attached hereto marked as Exhibit B).

The "fixed amount of salary" (pursuant 55/ ILCS 5/4-10001) is indicated on Exhibit B. It does not appear to include travel and expense allowances.

**PAGE 3 OF 6**

In Mr. Kraft's letter to the County Board Page 3 of 6 he quotes the Code of Civil Procedure as follows:

**Article XX, Section 20-101, of the Code of Civil Procedure** defines

"compensation" as including all the "fringe benefits" within that definition.

1) *"Compensation, benefits or remuneration" includes regular compensation, overtime compensation, vacation compensation, deferred compensation, sick pay, disability pay, sick leave, disability leave, medical, dental, optical or other health benefits, pension or retirement benefits or any other pay, compensation, benefits, or any other remuneration*

The Statute is unambiguous. This definition of compensation is specific for the purposes of the Article:

ARTICLE XX. RECOVERY OF FRAUDULENTLY OBTAINED PUBLIC FUNDS (735 ILCS 5/20-101) (from Ch. 110, par. 20-101)

Sec. 20-101. **As used in this Article:**

(1) "Compensation, benefits or remuneration" includes regular compensation, overtime compensation, vacation compensation, deferred compensation, sick pay,



disability pay, sick leave, disability leave, medical, dental, optical or other health benefits, pension or retirement benefits or any other pay, compensation, benefits, or any other remuneration.

Just as this definition of “compensation” is specific to the recovery of fraudulently obtained public funds, the definition of “employee” is specific to the Powers and Duties of the County Board to provide insurance to Employees.

**PAGE 3 OF 6**

Mr. Kraft’s letter to the County Board Page 3 of 6 quotes the Finance portion of the Illinois Constitution as follows:

**The Illinois Constitution, Article VIII, Section 1(b)** states that a public body can use public funds “only as authorized by law or ordinance”.

*(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds **only as authorized by law or ordinance.***

The County Board is clearly authorized by law. Pursuant to 55 ILCS 5/5-1069 health insurance may be provided to employees of the county. That same law specifically includes elected officials. (55 ILCS 5/5-1069(e)).

**PAGE 3 OF 6**

Mr. Kraft’s letter quotes as follows:

**The Counties Code, Section 5-1069, Subparagraph (a)** says a county board “**may**” provide for insurance and subparagraph (e) states elected and appointed officials are included in the term “employees” in this section.

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

The County Board is clearly authorized by law to provide insurance and the county board of 1977 exercised this power and insurance has been available to employees and elected officials since that date.

Mr. Kraft's letter addresses the Coles County Employee Manual.

**COUNTY POLICY DOES NOT PERMIT BOARD MEMBERS TO  
RECEIVED HEALTH INSURANCE**

The Coles County Employee Policy Manual, Section 10, Classifies Personnel and appears to list "County Officials" – such as County Board members – as "Salaried Exempt." There are certainly no other classifications applicable to county board members as defined in the Policy Manual. This Section defines "Regular Full-Time" as working a minimum of 35 hours per week.

The Coles County Employee Policy Manual, Section 24, Clearly established that "The County will provide health and life insurance to all full-time employees" and further defines "full-time employees" as working 30 hours or more per week.

The Coles County Employee Policy Manual does not reference elected officials, is consistent with the law, and is irrelevant to the issues at hand relating to elected officials.

Mr. Kraft concludes as follows:

**THE COMPENSATION SETTING RESOLUTION IS PROPER AND  
DOES NOT AUTHORIZE HEALTH INSURANCE FOR COUNTY  
BOARD MEMBERS**

As evidenced in Exhibit B the Resolution Re: County Officers Salary is consistent with law as to method of compensation (55 ILCS 5/2-3008) consistent with law as to county board members salaries (55 ILCS 5/4-10001). The insistence that it must include a health insurance clause is inconsistent with law. (55/ ILCS 5/5-1069).

Mr. Kraft asked the State's Attorney to send a request seeking the opinion of the Attorney General.

The purpose of a State's Attorney submitting questions to the Attorney General is to seek opinion as to unsettled matters of law and matters of first impression. The statutes and precedence governing the matters at hand are unambiguous and well settled. It is my belief the Attorney General would simply defer to the statute and previous opinions readily available.

**1. Are "compensation" and "salary" synonymous in relation to the counties code mandate that the county "set the compensation" of county board members in accordance with the "method of compensation" selected?**

Answer: Insurance is a fringe benefit and "Such payments for fringe benefits may not constitute "salary" in the strictest sense of that word, but they are 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)". File No. 94-022, 1994 WL 601861, at \*2 (Ill. A.G. Oct. 25, 1994).

The State's Attorney of Ogle County sought the opinion of Attorney General Roland Burris because he had advised the township officers they could not take advantage of the newly instituted township funded group health insurance until the following election cycle. The Township Officials passed a resolution to permit them to initiate coverage for themselves during their current term in office. AG Burris opined: "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. No. File No. 94-022, 1994 WL 601861, at \*1 (Ill. A.G. Oct. 25, 1994)

For the purposes of the Illinois Constitution's prohibition of increasing or diminishing salaries of elected officials during a term in office, insurance is compensation. As faced by the County Board in 1977.

For the purposes of fixing the compensation of County Board Members pursuant to 55 ILCS 5/4-10001 insurance is not compensation but a fringe benefit.

Other instances defining health insurance as a fringe benefit:

**Pension Benefits- health insurance = fringe benefit not salary**

There is no indication that the term "salary" as used in Article 5 was ever intended by the legislature to include fringe benefits and other forms of compensation other than an officer's basic salary. Thus, there can be no claim that the City or pension board has somehow redefined a statutory term, thus diminishing an officer's benefits. *Holland v. City of Chicago*, 289 Ill. App. 3d 682, 691, 682 N.E.2d 323, 329 (1997)

The court also observed that "salary" generally means a fixed annual or periodical payment and thus does not typically include fringe benefits such as insurance premiums, clothing allowance, mileage, and vacation pay. *Jahn*, 99 Ill.App.3d at 209, 54 Ill.Dec. 625, 425 N.E.2d 490. *Holland v. City of Chicago*, 289 Ill. App. 3d 682, 689, 682 N.E.2d 323, 327 (1997)

**Prevailing Wage Act – health insurance = fringe benefit**

The terms "general prevailing rate of hourly wages", "general prevailing rate of wages" or "prevailing rate of wages" when used in this Act mean the hourly cash wages plus annualized fringe benefits for training and apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training, health and welfare, insurance, vacations and pensions paid generally, in the locality in which the work is being performed, to employees engaged in work of a similar character on public works. (820 ILCS 130/2)

**Municipal Corporations Public Employment – health insurance = fringe benefit is not part of salary**

We note that the word “salary” has been defined in other contexts to mean a “fixed annual or periodical payment” (*Commonwealth Insurance Co. v. Board of Review* (1953), 414 Ill. 475, 485, 111 N.E.2d 345. The word is most often used to mean a fixed amount rather than a fringe benefit such as insurance premiums would be considered. *Jahn v. City of Woodstock*, 99 Ill. App. 3d 206, 209, 425 N.E.2d 490, 493 (1981).

**Worker’s Compensation Act – health insurance = fringe benefit not wages**

The leading case on whether the average weekly wage includes fringe benefits is *Morrison–Knudsen Construction Co. v. Director, Office Workers' Compensation Programs, United States Department of Labor* (1983), 461 U.S. 624, 103 S.Ct. 2045, 76 L.Ed.2d 194, in which the Supreme Court held that an employer's contributions to union trust funds for health and welfare, pensions, and training were not considered wages for the purpose of calculating benefits under the District of Columbia Workers' Compensation Act. In *Morrison–Knudsen Construction Co.*, the relevant statutory provision stated that “ ‘[w]ages’ means the money rate at which the service

rendered is recompensed under the contract of hiring in force at the time of injury\*\*\**Pluto v. Illinois Indus. Comm'n*, 272 Ill. App. 3d 722, 727, 650 N.E.2d 631, 635 (1995)

**2. Are “compensation” and “salary” synonymous in relation to other elected officials (State’s Attorney, Sheriff, etc.) and their compensation as set by the county board? Is providing benefits to elected officials that are not included in the compensation setting resolution a violation of Article 8 section 9(b) due to the providing of an increase in their salary?**

No. The statute is unambiguous, elected officials are afforded the fringe benefit of insurance once a county chooses to provide the same. All elected officials have enjoyed this benefit since 1977.

**3. If the answer to #2 is yes, is providing benefits which are not included in the compensation setting resolution a violation of Article 8 section 9(b) of the Illinois Constitution (increase or decrease of compensation during their term of office)?**

The answer to #2 is no. However, for the purposes of the Illinois Constitution at Article VII, §9 when a county determines to provide insurance to its employees all elected officials must wait for the following election cycle to participate as the same constitutes an increase in compensation.

**4. Does ALL compensation have to be included in any ordinance/resolution setting compensation? IE: Health, Life, and Dental Insurances, IMRF, vehicle allowances, health insurance opt-out payments, etc?**

No. The statute is unambiguous. 55 ILCS 5/4-1001 is entitled “Division 4-10. County Board Members’ Salaries, said statute is set forth in full hereinabove.



**5. IF county elected officials are considered employees according to the counties code when discussing the authorization to provide for health insurance, are they bound by the county policy's determination of the definition of which employees are eligible, [IE: must be "full time" employee in order to be eligible for county health insurance programs] absent any other provision in county policy specifically pertaining to elected officials and health insurance eligibility?**

No. Elected officials are not addressed in the Coles County Employee Manual. They are employees pursuant to 55 ILCS 5/5-1069(e).

**6. Implied repeal – Does the passing of a new compensation setting ordinance “imply the repeal” of previously passed compensation setting ordinances for the same office(s)? Does it repeal the previous ordinance setting compensation for the same offices? Does it repeal any and all perks, stipends, benefits of previous ordinances? Must a new ordinance be passed prior to every election? If a new ordinance is not passed prior to an election, does the most recent previous ordinance stay in effect?**

The allegations in this matter is that the Coles County Board Members have illegally participated in the health insurance plan of Coles County since 1977 based upon the lack of language providing for health insurance in the Resolution Re: County Officers Salary. As stated above, health insurance is provided by law, a resolution is not necessary. A resolution is only necessary if the insurance is to be extended to retired employees and former elected officers.

**7. May the county pass an ordinance, after-the-fact, to approve previous compensation received, but never included in any previous compensation setting ordinances, even if that compensation [insurance] violated the county policy on insurance eligibility?**

I do not believe the County Board may pass an after-the-fact resolution.