

TO: Coles County Board

FROM: John Kraft, ECWd

DATE: February 17, 2019

Re: Compensation Setting Resolution for Coles County Elected Officials

The letter dated January 30, 2019 from the Coles County State's Attorney to the Coles County Board does not reflect the process that must be used to include insurance as part of the compensation received by a Coles County Board member.

In short, the statement in the January 30, 2019 letter of "no enabling resolution or ordinance is necessary where the action is permitted by statute" is not correct when speaking of compensation to elected officials. It ignores the other statutory requirements for setting compensation. Being permitted by statute only means it "may" be included as compensation in the resolution or ordinance setting the compensation.

If the County Board had wanted to provide for insurance, IMRF, etc, they would have, and should have, placed it into the Resolutions setting their compensation.

Our Illinois Constitution is the foundational beginning of our laws. As it relates to compensation, it is clearly outlined in Article 8 section 9(b)

*ILLINOIS CONSTITUTION. ARTICLE 8. SECTION 9. SALARIES AND FEES*

*(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.)*

**ALL SALARIES AND BENEFITS OF ELECTED OFFICIALS ARE COMPENSATION WHICH SHALL BE SET BY RESOLUTION OR ORDINANCE**

See: Harlan v. Sweet, 564 NE 2d 1192 - Ill: Supreme Court 1990

*"We do not accept plaintiffs' argument that this difference indicates that only salaries of public officials cannot be increased during their terms of office and that this restriction does not apply to other forms of compensation such as a stipend. Even if there was a significant difference in the meanings of the terms in this context, the same two principles which prohibit increasing salaries would prohibit the payment of other forms of compensation, that is: (1) the power to increase one's salary (compensation) should not be used to influence the performance of an officeholder, and (2) a person ought not to be able to increase his or her own salary (compensation). (See G. Braden & R. Cohn, *The Illinois Constitution: An Annotated & Comparative Analysis* 476-77 (1969).) "*

*"It is simply hard to envision how these elected officials, who are paid by way of salary, can be given more money for the performance of their duties and have it be termed 1195\*1195 something other than salary."*

No reasonable person would think elected officials could simply add the health insurance they wanted at a later date without prior approval by Resolution.

This board told the public what they were paying board members and the chairman, and then turned around and added benefits without proper notification, and without using the correct procedure. While the public thinks board members are receiving **\$14,000** per year, some have added health insurance, making it additional compensation without informing the public.

This is compensation in excess of the Resolution setting their compensation and by all indications violates our Illinois Constitution.

### **HEALTH INSURANCE IS AUTHORIZED ACCORDING TO LAW**

The Counties Code, 55 ILCS 5/5-1069, states that the county board “may” arrange to provide, among others, health insurance to its employees, and further defines “employees” to include elected or appointed officials (Section 5-1069(e)).

There is no dispute that county board members in general “may” receive health insurance should the county board exercise its authority to provide it thru the “method of compensation” chosen and written in the compensation setting Resolution.

### **THIS AUTHORIZATION IS CONTIGIENT UPON SEVERAL OTHER FACTORS** **COUNTY BOARDS SHALL FIX THE “METHOD OF COMPENSATION”**

**The Local Government Officer Compensation Act**, 50 ILCS 145(2), requires a county to fix the compensation of its elected official at least 180 days before the beginning of the terms of the officer whose compensation is to be fixed.

#### **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.

**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 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 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**.

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

The Coles County Board “fixed their compensation in accordance with the method of compensation selected by the county board” as the Counties Code, Sections 2-3008 and 4-10001 provide. The Resolution complies with the Illinois Constitution, Article VIII, Section 1(b). The Resolution does not authorize Health Insurance as part of board member compensation.

If the county board wanted to provide health insurance as part of their compensation, they certainly had the power, under Section 5-1069 of the Counties Code to provide for it. Instead, the Coles County Board chose a “method of compensation” and passed a compensation setting resolution which did not include a provision for health insurance.

With the resolution failing to include health insurance benefits, any receipt of health insurance by a Coles County board member is improper and is considered an unlawful increase in compensation during their term of office. This could also be considered unlawful receipt of compensation not previously authorized.

Considering this information has been brought to the attention of the County Board and its legal counsel, to continue providing benefits never established in accordance with well-established law, such action could also be considered Misapplication of Funds [720 ILCS 5/33E-16].

## **WHAT IS THE REMEDY?**

**One remedy (and the only completely legitimate one)** is to immediately cancel the health insurance of all county board members and demand return of the funds received in violation of the compensation setting resolution and state laws.

**Another remedy (not fully compliant with the laws on compensation)** would be to pass:

- A Resolution acknowledging the current technically improper receipt of health insurance.
- Amend the Coles County Employee Policy Manual, Section 24, to state that the County will provide health insurance to all “Salaried Exempt” personnel.
- A Resolution setting the compensation of Coles County elected officials whose term starts at the next election, which includes the monetary salary and any additional benefits (insurance, IMRF, etc.) clearly listed.

### **A third remedy**

*The State’s Attorney can request an opinion from the Attorney General, and we suggest he do so. We are asking that Coles County seek a written opinion from the Attorney General’s Opinions Bureau which includes at a minimum the following questions:*

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?*
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?*
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)?*
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?*
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?*

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?*
  
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?*