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State of Louisiana
DEPARTMENT OF JUSTICE
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Opinion 13-0136

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90 - A - 1 PUBLIC FUNDS & CONTRACTS
La. R.S. 33:5151

Livingston Parish is authorized by La. R.S. 33:5151(A) and its home rule charter to pay health insurance premiums for its council members. Nevertheless, the payment of these premiums constitutes "compensation" that must be included when determining whether the council members are being paid a rate that is higher than that authorized by the home rule charter.

Dear Mr. Moody:

On behalf of Livingston Parish (the "Parish") President Layton Ricks, you have requested an opinion of this office as to whether the Parish may pay medical insurance premiums on policies for its council members. If the answer is yes, then you also ask whether the Parish must adopt an ordinance authorizing the parish administration to pay these premiums. In your request, you state that the Parish's home rule charter (the "Charter") is silent on the matter.

By way of background, under La. Const. art. VI, § 44(1), the Parish is a local governmental subdivision of this state and, in accordance with La. Const. art. VI, § 5, it has adopted the Charter. Pertinently, La. Const. art. VI, § 5(E) and (F) provide as follows:

(E) Structure and Organization; Powers; Functions. A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.

(F) Additional Powers and Functions. Except as prohibited by its charter, a local governmental subdivision adopting a home rule charter under this Section shall have the additional powers and functions granted to local governmental subdivisions by other provisions of this constitution.

Further, La. Const. art. VII, § 14 generally prohibits the loan, pledge and/or donation of public funds, credit and property to any person, association or corporation, public or private. However, constitutional exceptions to this

prohibition are found in Section 14(B) which provides, in pertinent part, the following:

Nothing in this Section shall prevent...(2) contributions of public funds to pension and insurance programs for the benefit of public employees....

As can be seen from the above, unless prohibited by the Charter, the Constitution enables local governmental subdivisions, such as the Parish, to fund insurance programs for its officials.¹ This authority has been implemented by the Louisiana Legislature in La. R.S. 42:851 and 33:5151. Specifically, La. R.S. 33:5151(A), relative to political subdivisions such as the Parish, provides as follows:

Any municipality or political subdivision of the state may make contracts of insurance with any insurance company legally authorized to do business in this state insuring their employees and officials under policies of group insurance covering hospitalization, and retirement, for such employees and officials, and may agree to match the payments of the employees and officials for the premiums or charges for any such contracts payable out of the funds of such municipality or political subdivision, respectively.

Generally, because the Parish is a political subdivision of the state,² if all provisions of La. R.S. 33:5151 are satisfied, it may pay for the medical insurance of its officials.³ However, Section 2.05(A) of the Charter limits the compensation of council members to \$800 per month.

Our office has frequently concluded that the payment of health insurance premiums constitutes a related benefit and/or "compensation."⁴ In La. Atty. Gen. Op. No. 03-0127, our office stated that "if an official's salary is set by ordinance, the ordinance *must be amended to include health insurance and any other benefits* (emphasis added)." Similarly, in La. Atty. Gen. Op. No. 99-185, our office stated that a village "must adopt an ordinance fixing the compensation of

¹ We caution, however, that although a political subdivision may pay the cost of insurance premiums for its officials, the agreement or contract of insurance must be in place before the payments are authorized, and past payments may not be reimbursed. In Atty. Gen. Op. No. 91-219, we provided that reimbursement of payments prior to the existence of a contract or agreement of insurance would constitute a donation of public funds and therefore be barred by La. Const. art. VII, § 14(A).

² La. Const. art. VI, § 44(2).

³ In accord is La. Atty. Gen. Op. No. 08-0304.

⁴ See La. Atty. Gen. Op. Nos. 11-0186, 02-15, 96-153, 94-316, 92-547 and 91-314. Most of these opinions discuss health insurance constituting a related benefit or compensation within the meaning of La. R.S. 33:404.1, which addresses the compensation of municipal officers. However, we believe the reasoning in these opinions to be applicable to the Parish as well.

the mayor and members of the Board, *which would include the payment of health insurance premiums.*" [Emphasis added.]

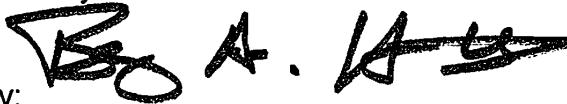
Here, as opposed to an ordinance, the Charter governs the compensation, including health insurance premiums, paid to council members. Again, Section 2.05(A) of the Charter limits the compensation of council members to \$800 per month. So, the Parish is already authorized to pay council members up to \$800 per month, including health insurance premiums and any other benefits. However, if the Parish is already paying the council members \$800 per month in compensation, excluding the health insurance premiums, then the Charter would have to be amended to allow for the additional compensation.

In keeping with these past opinions, it is the opinion of this office that the Parish is authorized by La. R.S. 33:5151(A) and the Charter to pay health insurance premiums for its council members. Nevertheless, the payment of these premiums constitutes "compensation" that must be included when determining whether the council members are being paid a rate that is higher than that authorized by the Charter.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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By: 

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