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April 20, 2005

Opinion No. 05-052

Limitation on health insurance benefits for members of General Assembly

QUESTIONS

1. Can the General Assembly limit health insurance benefits for an interim elected or appointed official's term of service?
2. Can those benefits be terminated upon leaving active service or must they extend through the end of this General Assembly and then be terminated thereafter?

OPINIONS

1. Yes. Health insurance benefits do not automatically vest and can be altered or terminated where the language for establishment of eligibility contains no clear and express language stating that the health care benefits were intended to vest or could never be amended or terminated.
2. The limitation of health insurance benefits for members of the General Assembly may not take effect constitutionally until the next general election for Representatives to the General Assembly because the termination is a reduction in the compensation and expenses of the members of the General Assembly.

ANALYSIS

1. TENN. CODE ANN. § 8-27-203 establishes that upon retirement from the General Assembly any senator or representative may elect to retain state employees' health group insurance by paying the appropriate monthly premium. In a case of first impression, the Tennessee Supreme Court recently addressed whether health insurance benefits may be changed where two county employees alleged that they had vested rights in health care benefits upon retirement under the terms of prior county resolutions. *Davis v. Wilson County*, 70 S.W.3d 724 (Tenn. 2002). The Tennessee Supreme Court agreed with the holding of the Court of Appeals that health insurance benefits are classified as "welfare benefits" that do not automatically vest as opposed to pension or retirement benefits that do. *Id.* at p. 727. Welfare benefits may be modified or terminated at any time unless it can be shown that the benefits were intended to vest or were not to be terminated. *Id.*

TENN. CODE ANN. § 8-27-203 does not contain language evidencing an intent to vest such benefits or that the benefits cannot be modified or terminated. Therefore, these are welfare benefits that do not vest and may be modified or terminated.¹

2. Article II, Section 23 of the Tennessee Constitution addresses the compensation of members of the General Assembly and provides in part:

The compensation and expenses of the members of the General Assembly may from time to time be reduced or increased by laws enacted by the General Assembly; however, no increase or decrease in the amount thereof shall take effect until the next general election for Representatives to the General Assembly.

A review of the case law is helpful in determining whether health insurance benefits would be considered part of the compensation package for members of the General Assembly. The Tennessee Court of Appeals examined the meaning of the terms “wages” and “fringe benefits” in a dispute over whether an early retirement incentive program could be unilaterally adopted by the Board of Education or was subject to mandatory negotiations required by statute. *Hamblen County County Education Association v. Hamblen County Board of Education*, 892 S.W.2d 428 (Tenn. Ct. App. 1994), *perm. app. denied* (Tenn. 1995).

“Fringe benefits” is a broad concept. It is one which we all encountered when we first entered the labor market. It is commonly understood in this country to mean benefits (footnote omitted) which accrue to an employee by reason of his employment other than the employee’s salary or wages. The word “fringe” in this context is to differentiate these benefits from the “direct” benefit of one’s salary or wages.

Lexicographers appear to be of one mind in defining the concept of "fringe benefits." The term has been defined as the "[s]ide benefits that accompany or are in addition to a person's regular compensation (e.g., paid insurance, paid holidays and vacations)." William Statsky, *West's Legal Thesaurus/Dictionary*, 340 (1986). Another dictionary has defined a "fringe benefit" as "[a]n employment benefit given in addition to one's wage or salary." *The American Heritage Dictionary of the English Language* (William Morris, Editor, 1978).

¹A split of opinion exists with regard to this issue and other state courts have held that medical benefits are part of vested retirement benefits that cannot be diminished or impaired. *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882 (Alaska 2003) (containing citations to other state courts holding that medical benefits vest).

Recognized legal dictionaries are in accord. In *Ballentine's Law Dictionary* at 503 (3rd ed. 1969), the term is defined as "[b]enefits received by any employee in addition to wages or salary, such as group insurance, pension rights, etc." The most authoritative of the legal dictionaries gives a more detailed, but substantially similar, definition of "fringe benefits":

Side, non-wage benefits which accompany or are in addition to a person's employment such as paid insurance, recreational facilities, sick leave, profit-sharing plans, paid holidays and vacations, etc. Such benefits are in addition to regular salary or wages and are a matter of bargaining in union contracts. *Black's Law Dictionary*, 667-68 (Sixth Edition 1990).

Id. at pp. 432-433.

In another case discussing wages and fringe benefits, employees filed a breach of contract action and alleged that pension benefits were a part of the salary of the employees. *Coleman v. St. Clair*, 1991 WL 4254 (Tenn. Ct. App.). The Court of Appeals found that the Chancellor erred in holding that salary included contributions to the employees' retirement plan.

Salary is defined as: "a fixed compensation periodically paid to a person for regular work or services, esp. work other than that of a manual, mechanical, or menial kind." The Random House Dictionary of the English Language 1262 (1966). We believe that contributions to the retirement plans would constitute fringe benefits rather than salary. A fringe benefit is described as: "a benefit, as free life or health insurance, received by an employee in addition to his regular pay." *Id.* at 569. Other jurisdictions have dealt with the definition of salary as contained in statutes and executive orders prohibiting increases or decreases in salaries during a term of office. *Garian v. City of Highland Park*, 439 N.W.2d 368 (Mich. App.1989) held that fringe benefits are not considered to be salary. *Taylor v. McGuire*, 420 N.Y.S.2d 248, held that the term salary does not include fringe benefits, whereas the broader term compensation could include fringe benefits.

Id. at p. 3.

Based on these cases, use of the word "compensation" rather than "salary" in Article II, § 23 strongly suggests that compensation would include fringe benefits as well as salary. A reduction in health insurance benefits would trigger coverage of the constitutional provisions to this proposed

action. Therefore, the reduction or elimination of health insurance benefits for members of the General Assembly² must wait to take effect until the next general election for Representatives to the General Assembly.

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²See Senate Bill 2014, currently pending.