

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-136

Limitation on Health Insurance Benefits for Members of General Assembly Found Guilty of Crimes Involving Public Office

QUESTIONS

1. Can the General Assembly remove insurance benefits provided by TENN. CODE ANN. § 8-27-203 for legislators leaving office, and that are found guilty of crimes involving public office?
2. Could access to health insurance benefits be revoked if a former member of the General Assembly that is enrolled in the plan is subsequently found guilty of crimes involving public office?

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.

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.

2. Yes. Revocation of health insurance benefits for a former member of the General Assembly could take place without waiting to take effect until the next general election. Art. II, § 23, of the Tennessee Constitution covers only “members of the General Assembly” and, therefore, does not apply to this situation.

ANALYSIS

1. These issues were discussed in Op. Tenn. Att’y Gen. 05-052 (April 20, 2005), a copy of which is attached. 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.

The previous opinion also discussed that the use of the word “compensation” rather than “salary” in Art. II, § 23, of the Tennessee Constitution suggests that compensation of members of the General Assembly would include fringe benefits, such as health insurance benefits, as well as salary. 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 reduction in health insurance benefits would trigger application of the constitutional provisions to this proposed action. Therefore, the reduction or elimination of health insurance benefits for members of the General Assembly must wait to take effect until the next general election for Representatives to the General Assembly.

2. Art. II, § 23, of the Tennessee Constitution covers only “members of the General Assembly.” Revocation of compensation being paid (or a change in compensation being paid) to a former member of the General Assembly does not implicate Art. II, § 23, even in the middle of a session of the General Assembly. A main purpose behind this section of the Tennessee Constitution is to discourage government officials from improperly taking advantage of their positions to grant favors or benefits. *Ashe v. Leech*, 653 S.W.2d 398 (Tenn. 1983). None of the policies underlying Art. II, § 23, would be undermined by allowing this, and the language of the provision does not prohibit it. Therefore, such revocation could take place without waiting to take effect until the next general election.

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Page 3

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