

**COUNTY OF SAN MATEO
DISTRICT ATTORNEY'S OFFICE
INTERDEPARTMENTAL MEMO**

DATE: October 17, 2013

TO: Insp. Bill Massey
District Attorney Office
Bureau of Investigations

FROM: Albert A. Serrato
Assistant District Attorney

SUBJECT: Sequoia Healthcare District - CR13-0802-01

Bill,

I have reviewed the complaint presented in the above-referenced case in light of the applicable statutory scheme. The question presented is whether Board of Directors of the Sequoia Healthcare District acted improperly in voting to increase the health insurance premium subsidy they receive. The complaining party, Director Jack Hickey, asserts that sitting board members are not allowed to benefit from increases in "compensation" resulting from an action on which they voted. He believes that the increased benefit received by members of the Board amounts to a misappropriation of public funds and a violation of Government Code section 36516.5.

Director Hickey voted against the increase and made known his position regarding the propriety of the increase. As a result, counsel for the District was asked to research the legality of the action. He did so and concluded that he believed the action was permissible, although he acknowledged that the answer was not entirely clear. Apparently in response, the Board revisited the issue six months later and voted to rescind the change, resetting the benefit for sitting Board members to its previous level. The issue remaining is whether the Board members who received the increased benefit should be required to disgorge the additional amount received.

The primary issue is whether the benefits received and not returned, despite the rescission of the Board's decision, amount to a "gift" of public funds. The law relating to "misuse of public funds" is set forth in the California Constitution, Article 16, section 6, which prohibits making any gift of public money to any individual or entity: "...the Legislature [or other legislative bodies] shall have no...power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual... whatever..." However, not all expenditures which involve a benefit to a private person or group are gifts within the meaning of this section, as long

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as the funds are expended for a public purpose. In other words, public funds may be expended if a direct and substantial public purpose is served by the expenditure and private entities are benefited only incidentally to the promotion of the public purpose. (See eg. *Ransom v. Los Angeles City High School District* (1954) 129 Cal.App.2d 500.)

It is settled that providing health insurance benefits to Board members is generally permissible, and not a gift of public funds, because providing family health insurance serves a public purpose in compensating the directors for their services performed. 66 Ops.Cal.Atty.Gen 13 (1983).

The corollary issue is whether the Board's action in increasing benefits for the six months in question violated the general rule, set forth in Government Code section 36516.5, which restricts the manner in which a legislative Board can change its compensation. That section provides that a "change in compensation does not apply to a council member during the council member's term of office." If the health benefits in question are considered "compensation," then sitting Board members should not have received the increase during their term.

As counsel for the Board concluded, there is little available guidance in answering this question. Health & Safety section 32103 applies specifically to local hospital districts. That section reads in pertinent part:

The board of directors shall serve without compensation except that the board of directors, by a resolution adopted by a majority vote of the members of the board, may authorize the payment of not to exceed one hundred dollars (\$100) per meeting not to exceed five meetings a month as compensation to each member of the board of directors.

There are no published appellate cases interpreting this section. On its face, it appears that the "compensation" provided to members of the Board is limited to the \$100 payment per meeting. This conclusion is supported by the above-referenced opinion of the Attorney General, which concluded that the compensation limit established for hospital district board members does not apply to the provision of health insurance for the directors. If health benefits were considered "compensation," then the total cost of the health benefit would have to be subtracted from the \$100 maximum per meeting payments. However, while the opinion assumes without deciding that "compensation" generally includes benefits, it then cites to Govt. Code section 53208 to conclude that "participation" in health benefits is not limited by other statutory provisions setting forth total compensation.

"Notwithstanding any statutory limitation upon compensation or statutory restriction relating to interest in contracts entered into by any local agency, any member of a

legislative body may participate in any plan of health and welfare benefits permitted by this article." When the Legislature used the word 'participate' in section 53208, we do not believe that it intended for the participation to be limited by other statutory provisions setting the 'total' amount of compensation to be furnished." *Id.* at 16.

Consequently, the "statutory limitation of section 36516.5 would thus be inapplicable to the furnishing" of health benefits. Whether the benefits under such a plan may be adjusted upward or downward during an incumbent's term of office would depend upon whether the benefits are "part of a plan 'for large numbers of employees' and upon any conditions established by the legislative body in providing for such benefits. 80 Ops.Cal.Atty.Gen.119, 126 (1997)


Conditions relating to the provision of benefits are set forth in the District's "Policies and Procedures" (Adopted April 19, 2005). Policy No. 15 specifies applicable remuneration and reimbursement. It provides, in Policy No. 15.1, that Directors receive no fee for attending meetings. Policy No. 15.2 specifies that health care and dental insurance premiums will be covered in part by the District. The subsection, however, contains no conditions relating to a change in benefits during an incumbent's term. Consequently, the general rule prohibiting increases during the incumbent's term would apply. However, while the District does not provide a "single" plan encompassing all employees, the change applied not simply to the Directors but to staff as well, arguably bringing it within the exception noted in the Attorney General's 1997 opinion.

The role of the District Attorney, and any reviewing court, in assessing an alleged "misuse of public funds" is not to weigh in on the public policy judgment which underlies the decision. Case law has made clear that "the determination of what constitutes a public purpose is primarily a matter for the Legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis." *Board of Supervisors v. Dolan* (1975) 45 Cal.App.3d 237. Where, as here, a legitimate public purpose is stated, our inquiry is limited to testing whether the stated purposes are reasonable. While minds can differ as to best practices, the decision here is not, on its face, unreasonable, as there does appear to be support for the guidance provided by counsel for the District. In short, absent specific decisional or other authority prohibiting the action, this office is not in a position to legally compel reimbursement of the increased benefits.

I am therefore closing this inquiry.

Very truly yours,

Stephen M. Wagstaffe, District Attorney

By: 
Albert A. Serrato
Assistant District Attorney

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