

## MEMORANDUM

TO: Lee Michelson  
FROM: Mark D. Hudak  
DATE: December 6, 2012  
SUBJECT: Increasing Health Care Benefit Limits for Board Members

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I researched the issue of whether an increase in the amount reimbursable for health care premiums can take effect during each Board member's current term. The answer is not entirely clear, but I think it can be done.

It is well-settled that changes in compensation may not be imposed during the current terms of the elected officials who vote on the adjustment. See, e.g. 80 Ops. Cal. Atty. Gen. 119 (1997) (applied to City Council and elected mayor).

However, health care benefits are not considered "compensation" for most purposes. In the case of directors of a healthcare district, "compensation" under Health & Safety Code §32103 means the stipend for attending meetings. Section 32103 imposes limits on the maximum compensation. The Attorney General has taken the position that health care benefits are not subject to this statutory limitation, provided that the benefits are the same as are offered to employees. 66 Ops. Cal. Atty. Gen. 13 (1983). At least in this situation, compensation and benefits are treated differently.

In 80 Ops. Cal. Atty. Gen. 113, the Attorney General considered whether a City Council could reduce the health and welfare benefits of the elected mayor during his term of office. The Attorney General observed that increases or decreases in premiums payable under a health insurance plan that is provided to employees, officers, and the mayor could take effect during the term of office, since these adjustments are not subject to the Council's discretion and apply to all plan participants. The Attorney General then opined that the City Council could not reduce the benefits of the elected mayor in any manner that was not generally applicable to other plan participants. 80 Ops. Cal. Atty. Gen. at 127.<sup>1</sup>

Our situation is a bit different because the District reimburses employees and directors a maximum amount for their individual plans rather than providing a single plan for all. Based on the information provided to the Board on December 5, it appears that the increase in the maximum reimbursement amount is necessary to allow employees to meet the rising cost of their individual plans and maintain the same coverage. That situation should pertain equally to the directors and their individual plans. Accordingly, I believe that the increase in reimbursement is analogous to the type of cost adjustment approved by the Attorney General in 80 Ops. Cal. Atty. Gen. 113. However, the issue could be viewed differently because we do not offer a plan for employees and directors alike.

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<sup>1</sup> The opinion does not disclose the nature of the intended decrease for the mayor. Presumably, it would have been in the nature of reducing the amount the City contributed for his premium, limiting it to a lesser percentage than the other plan participants or imposing a dollar cap.