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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE
...in cooperation with the Tennessee Municipal League

TECHNICAL bulletin

May 27, 2010

HEALTH INSURANCE PREMIUMS AS SALARY FOR MUNICIPAL ELECTED OFFICIALS AND EMPLOYEES

Don Darden, Municipl Management Consultant

INTRODUCTION

In some Tennessee cities compensation is awarded to mayors and board members in lieu of health insurance coverage. Such payments may be as much as $800 or more per month. It is also a common practice for small cities that cannot afford health insurance premiums to provide an allowance, usually much less than the cost of health insurance premiums, in lieu of the insurance. Cities also are authorized by federal statutes to establish health savings accounts, and such accounts may provide for contributions from both the employee and the city government. It could be argued that a contribution to a health savings account is not in itself health insurance since health insurance in such plans is for catastrophic health coverage. The contribution may be spent for IRS-qualified health-related expenses, but may also be retained as a savings account very similar to a 401(k). It appears that the matter of payments in lieu of health insurance, allowances, and contributions to a health savings account have raised questions as to the legality of such practice.

MAYORS AND GOVERNING BOARD MEMBERS

The Constitution of the state of Tennessee, Article 11, Section 9 prohibits public officials from having their salaries altered by special, local, or private acts during their terms of office. The state attorney general has said in at least two opinions (Op. Tenn. Atty. Gen. No. 04-031 and Op. Tenn. Atty. Gen. No. 04-162) that such practice is not legal for local elected officials and employees.

T.C.A. § 8-27-606 authorizes city governments to pay health insurance premiums up to 100 percent for employees, mayors, and board members. MTAS attorneys advise that such compensation amounts to a salary increase when authorized by special, local, or private act. The legislature may, by general law, authorize altering salaries and making in-lieu-of health insurance payments, but it has not extended such authorization to cities. **Mayors and governing bodies are cautioned that receiving such payments may result in the officials having to repay the money to the city.** This could be a fairly large sum for an elected official who has received $800 per month for three or more years. **MTAS, therefore, recommends that cities refrain from making in-lieu-of health insurance cash payments to local elected officials until such time as the legislature may, by general law, authorize such payments.**

Cities with general law mayor-aldermanic charters may alter salaries during their term of office by ordinance.

EMPLOYEES AND IN-LIEU-OF INSURANCE PAYMENTS

In Tennessee, cities have long been authorized to approve salary increases for employees by ordinance. Most employees do not have a "term of office", and their salaries are customarily adjusted on a yearly basis. The two attorney general opinions cited above point out that, in addition to local elected

officials, employees also are not authorized to receive payments in lieu of health insurance premiums. At least one trial court also has held this practice to be illegal. It should be noted that the trial court case is unreported, and the courts have not ruled on all of the matters cited in the AG opinion. This being the case, **MTAS advises cities not to make payments in lieu of health insurance payments to employees until (1) a court of record addresses this matter; (2) local private acts are amended to authorize cities to make such payments; or (3) a general law is enacted by the legislature authorizing cash payments in lieu of health insurance premiums for employees.** It would be difficult for an employee to repay large health insurance payments that may have accumulated for a period of several years.

For more information about health insurance premiums, please contact your MTAS municipal management consultant.

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