

Opinion No. 2013-148

March 18, 2014

The Honorable Daniel Shue  
Prosecuting Attorney  
Twelfth Judicial District  
Sebastian County Courts Building  
901 South B Street, Suite 209  
Fort Smith, Arkansas 72901

Dear Mr. Shue:

You have requested my opinion on the following questions concerning county-funded health insurance coverage for quorum court members:

1. Is it legal to change in midstream what was presented to Quorum Court members when they ran for office they were offered insurance with dependent coverage as compensation for the job?
2. If all elected officials are to be treated equally and if the Quorum Court family members are not allowed to have insurance, then is any other elected official allowed to have partially County-funded health insurance coverage for their families?
3. Could the Quorum Court take away from all elected officials the benefit of County-paid health insurance for family members?

**RESPONSE**

In my opinion, the answer to your first question is “yes.” With regard to your second question, there is no requirement in law that all elected officials be treated equally. More specific to your question, because quorum court members are not similarly situated with all other elected officials, the provision or lack of provision

of dependent coverage for the quorum court has no bearing on the question whether such coverage should be extended to other officials. The answer to your third question is generally “yes,” in my opinion.

***Question 1 - Is it legal to change in midstream what was presented to Quorum Court members when they ran for office they were offered insurance with dependent coverage as compensation for the job?***

One of my predecessors addressed the question whether counties may provide health insurance coverage to the families of quorum court members pursuant to A.C.A. § 14-14-1205, which states in relevant part:

In addition to any other compensation expense reimbursement or expense allowances provided members of the quorum court, *counties may provide medical insurance coverage for members of the quorum court.*<sup>1</sup>

My predecessor concluded that the answer was “no,” a county could not offer dependent coverage because the statute only authorizes coverage “for members of the quorum court.”<sup>2</sup>

I agree with this conclusion. As my predecessor explained, subsection (a)(3) was added to A.C.A. § 14-14-1205 by Act 363 of 1997. Prior to this enactment, the Arkansas Supreme Court in *Massongill v. County of Scott*<sup>3</sup> invalidated a county ordinance that provided health insurance benefits for quorum court members:

The court held that the subchapter of the Arkansas Code dealing with county personnel procedures “specifically restricts or limits compensation and expenses to be provided quorum court members to that which is provided in § 14-14-1205 and other statutes in subchapter 12.” [Citation omitted.] Because the health insurance coverage was a county expense not specified under § 14-14-1205, it was deemed invalid.<sup>4</sup>

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<sup>1</sup> A.C.A. § 14-14-1205(a)(3) (Supp. 2013) (emphasis added).

<sup>2</sup> Op. Att’y Gen. 98-091 at 3 (“I cannot construe this language to encompass the families of quorum court members.”).

<sup>3</sup> 329 Ark. 98, 947 S.W.2d 749 (1997).

<sup>4</sup> Op. 98-091 at 3.

The 1997 legislation was thus enacted in order to authorize the provision of health insurance benefits *for members of the quorum court*. In my opinion, this cannot be interpreted to include quorum court members’ dependents.

In response to your particular question, therefore, the “change in midstream” would be a necessary change in order to conform to state law. Counties of course cannot take action that is contrary to state law.<sup>5</sup>

***Question 2 - If all elected officials are to be treated equally and if the Quorum Court family members are not allowed to have insurance, then is any other elected official allowed to have partially County-funded health insurance coverage for their families?***

There is no requirement in law that all elected officials be treated equally. A concern about equal treatment can implicate the constitutional guarantee of equal protection,<sup>6</sup> but the equal protection doctrine essentially directs that all persons *similarly situated* should be treated alike.<sup>7</sup>

Quorum court members are not similarly situated with all other elected officials. This is evidenced, in part, by the Arkansas Constitution’s different treatment of quorum court members for purposes of compensation. Under Amendment 55, quorum court members’ “per diem” compensation is to be “fixed by law” (*i.e.*, established by the General Assembly), whereas “[c]ompensation of each county officer” is to be “fixed by the Quorum Court within a minimum and maximum to be determined by law.”<sup>8</sup> The enabling legislation for Amendment 55 (Act 742 of 1977) also reflects a differentiation between county officers and quorum court members for purposes of some of its provisions.<sup>9</sup>

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<sup>5</sup> Ark. Const. amend. 55, § 1; A.C.A. § 14-14-805(13) (Supp. 2013).

<sup>6</sup> The equal protection doctrine arises out of the Fourteenth Amendment to the United States Constitution and Article 2, sections 2 and 3 of the Arkansas Constitution.

<sup>7</sup> *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 439 (1985); *Waller v. Banks*, 2013 Ark. 399, 8, 2013 WL 5603930, 3 (“... a viable equal-protection claim requires a showing that appellant is similarly situated to those he claims are receiving favorable treatment.”).

<sup>8</sup> Ark. Const. Amend. 55, § 5.

<sup>9</sup> *See Op. Att’y Gen. 2003-059* (elaborating upon this differentiation).

Because quorum court members are not similarly situated with all other elected officials, the provision or lack of provision of dependent coverage for the quorum court has no bearing on the decision whether to extent such coverage to other officials.

***Question 3 - Could the Quorum Court take away from all elected officials the benefit of County-paid health insurance for family members?***

Generally, “yes,” given the quorum court’s power and duty respecting county appropriations. All allowances or expenses require a “specific appropriation”:

All compensation, including salary, hourly compensation, expense allowances, training expenses, and other remunerations, allowed to any county or district officer or employee thereof shall be made only on specific appropriation by the quorum court of the county.<sup>10</sup>

Pursuant to standard operating procedure, the quorum court may enact specific appropriations through the annual budget:

Appropriation measures enacted by a quorum court shall include the following categories of financial management:

\* \* \*

The enactment of specific appropriations by which a specified sum has been set apart in the treasury and devoted to the payment of a particular demand. *Specific appropriations may be enacted through the adoption of an annual budget*, a statement of estimated receipts and expenditures, in a manner prescribed by law.<sup>11</sup>

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<sup>10</sup> A.C.A. § 14-14-1203(a) (Supp. 2013). *See also* Ark. Const. art. 16, § 12 (“No money shall be paid out of the treasury until the same shall have been appropriated by law.”). This constitutional provision has been held applicable to the counties. *Mackey v. McDonald*, 255 Ark. 978, 986, 501 S.W.2d 726 (1974).

An “appropriation ordinance” is defined as “a measure by which the county quorum court designates a particular fund, or sets apart a specific portion of county revenue in the treasury, to be applied to some general object of expenditure or to some individual purchase or expense of the county.” A.C.A. § 14-14-907(a)(1) (Repl. 1998).

<sup>11</sup> A.C.A. § 14-14-907(a)(3)(B) (Repl. 1998) (emphasis added).

As a general matter, therefore, the quorum court may decide to remove the referenced health insurance benefit from the annual budget.<sup>12</sup> Consideration must be given, however, to the timing of such action in light of the prohibition against decreasing county officers’ compensation during a current term:

Any decrease in the annual salary or compensation of a county officer shall not become effective until January 1 following a general election held after the decrease has been fixed by the quorum court of the county.<sup>13</sup>

Assuming that the health insurance benefit would be deemed part of the officers’ “compensation” for purposes of this provision,<sup>14</sup> then its removal could not be effective until after the next general election.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM:EAW/cyh

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<sup>12</sup> The quorum court may “adopt, amend, or repeal” an appropriation ordinance that incorporates by reference the provisions of any county budget, without setting out the entire amended budget. *Id.* at (b).

<sup>13</sup> A.C.A. § 14-14-1203(d) (Supp. 2013).

<sup>14</sup> *See* subsection 14-14-1203(a), *supra* (including “other remunerations” within the reference to “all compensation.”).