



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-090

September 2, 2015

The Honorable Bart Hester
State Senator
Post Office Box 85
Cave Springs, AR 72718

Dear Senator Hester:

This is my opinion on your questions about “regulation and oversight of the products offered through the State Employees Benefit Corporation and the supervisory authority of the Executive Director of the Employee Benefits Division of the Arkansas Department of Finance and Administration under [Ark. Code Ann.] § 21-5-406.”

You offer the following background information:

The State and Public School Life and Health Insurance Board works with the Executive Director of the Employee Benefits Division of the Department of Finance and Administration to design and manage the State and Public School Life and Health Insurance Program, a self-funded plan that provides health and other benefits to state and public school employees. In addition, state and public school employees who are members of the Arkansas State Employees Association may be offered voluntary products by the State Employees Benefit Corporation.

The Executive Director of the Employee Benefits Division of the Department of Finance and Administration supervises the State and Public School Life and Health Insurance Program and other employee benefits, plans, and individual and group policies offered pursuant to § 21-5-406(e)(3), including the authority to supervise the

coverage, programs, and plans for state and public school employees concerning:

- (1) Life insurance coverage;
- (2) Accident coverage;
- (3) Dental coverage;
- (4) Disability benefit programs;
- (5) Optional retirement programs;
- (6) Deferred compensation;
- (7) Cafeteria plans; and
- (8) Other benefit plans, benefit programs, and individual and group benefit coverage that is offered to state and public school employees.

The State Employees Benefit Corporation benefit plan in effect on July 1, 1995, is excluded from the Executive Director of the Employee Benefits Division of the Department of Finance and Administration's supervision under § 21-5-406(e)(3)(C).

Your questions are:

Question 1: Since § 21-5-406(e)(3)(C) specifies that the State Employees Benefit Corporation benefit plan in effect on July 1, 1995, is excluded from supervision by the Executive Director of the Employee Benefits Division of the Department of Finance and Administration, can the Executive Director of the Employee Benefits Division of the Department of Finance and Administration supervise the products offered to state and public school employees by the State Employees Benefit Corporation that are not included [in] the benefit plan in effect on July 1, 1995?

Question 2: Under § 21-5-406(e)(3)(C), what entity or person is responsible for the supervision of a benefit plan and products offered by the State Employees Benefit Corporation to eligible state and public school employees but are not included in the benefit plan in effect on July 1, 1995?

Question 3: If the State Employees Benefit Corporation's benefit plan in effect on July 1, 1995 is the benefit plan that is excluded from supervision by the Executive Director of the Employee Benefits Division of the Department of Finance and Administration under § 21-5-406(e)(3)(C), would a revised benefit plan offered by the State Employees Benefit Corporation after July 1, 1995, be supervised by the Executive Director of the Employee Benefits Division of the Department of Finance and Administration?

RESPONSE

In my opinion, and subject to the qualifications discussed below, the answer to your first and third questions is “yes.” With respect to your second question, the Executive Director of the Employee Benefits Division of the Department of Finance and Administration is authorized to supervise the “plans and products” described in your question.

DISCUSSION

Question 1: Since § 21-5-406(e)(3)(C) specifies that the State Employees Benefit Corporation benefit plan in effect on July 1, 1995, is excluded from supervision by the Executive Director of the Employee Benefits Division of the Department of Finance and Administration, can the Executive Director of the Employee Benefits Division of the Department of Finance and Administration supervise the products offered to state and public school employees by the State Employees Benefit Corporation that are not included [in] the benefit plan in effect on July 1, 1995?

The law you cite provides that the Executive Director of the Employee Benefits Division of the Department of Finance and Administration (the “Executive Director”) “has the authority to supervise the implementation and day-to-day management of the [State and Public School Life and Health Insurance] program and other employee benefits, plans, and individual and group policies made available to participants, if applicable.” It further provides, however, that the supervisory authority granted does not include “supervising the State Employees Benefit Corporation benefit plan in effect on July 1, 1995.”

A product not included in the State Employees Benefit Corporation (“SEBCO”) benefit plan in effect on July 1, 1995, is clearly subject to the Executive Director’s supervisory authority to the extent the product is one of those coming within that authority, *i.e.*, “employee benefit programs, plans, and individual and group policies made available to participants, if applicable.”

Question 2: Under § 21-5-406(e)(3)(C), what entity or person is responsible for the supervision of a benefit plan and products offered by the State Employees Benefit Corporation to eligible state and public school employees but are not included in the benefit plan in effect on July 1, 1995?

As noted above, the law authorizes the Executive Director to supervise “employee benefits, plans, and individual and group policies” other than “the [SEBCO] benefit plan in effect on July 1, 1995.”

Question 3: If the State Employees Benefit Corporation’s benefit plan in effect on July 1, 1995 is the benefit plan that is excluded from supervision by the Executive Director of the Employee Benefits Division of the Department of Finance and Administration under § 21-5-406(e)(3)(C), would a revised benefit plan offered by the State Employees Benefit Corporation after July 1, 1995, be supervised by the Executive Director of the Employee Benefits Division of the Department of Finance and Administration?

The exception to the Executive Director’s supervisory authority is limited to “the [SEBCO] benefit plan in effect on July 1, 1995.” The plain meaning of the legislature’s use of both the definite article “the” and a specified date is that the exception is only for the plan as it existed on that date. To the extent SEBCO may offer a materially different plan, that plan is not the “plan in effect on July 1, 1995” and so is subject to the Executive Director’s supervisory authority.

My interpretation is confirmed by the history of this statute. In 1995, the statute stated that the Executive Director’s supervisory authority “shall not include the State Employee Benefit Corporation (SEBCO) benefit plan which is in effect on July 1, 1995.”¹ In 2013, the legislature amended this language by removing the words “which is,” but left the reference to July 1, 1995.² The legislature could have, but did not, remove the July 1, 1995 date. The legislature also could have, but did not, otherwise exclude from the Executive Director’s supervisory authority all SEBCO plans or benefits as opposed to specifically excluding the July 1, 1995 plan. The legislature could certainly have entirely excluded past, present, and future plans if it so chose.³

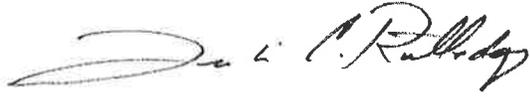
¹ Acts of 1995, Act 1206, § 8, eff. April 11, 1995.

² Acts of 2013 (1st Ex. Sess.), Act 6, § 2, eff. Oct. 21, 2013.

³ See, e.g., Ark. Code Ann. 21-5-406(e)(3)(E) (“The Arkansas State Police Employee Health Plan is exempt from any mandatory participation required by this section.”).

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Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rutledge". The signature is written in a cursive style with a large initial "L" and "R".

LESLIE RUTLEDGE
Attorney General