



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**J.B. VAN HOLLEN
ATTORNEY GENERAL**

**Kevin M. St. John
Deputy Attorney General**

**Steven P. Means
Executive Assistant**

**114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529**

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OAG—05—13

Ms. Juliana M. Ruenzel
Corporation Counsel
Brown County
Post Office Box 23600
Green Bay, WI 54305-3600

Dear Ms. Ruenzel:

¶ 1. You ask questions concerning insurance benefits for county supervisors in Brown County. You ask whether, in a county that is not self-organized, the provision of health, dental, and life insurance or the payment of insurance premiums for county supervisors is “compensation” within the meaning of Wis. Stat. § 59.10(3), which requires changes to compensation to be made by the county board (1) by two-thirds vote, (2) at the board’s annual meeting, and (3) limited to the supervisory term that begins after the next supervisory election. You next ask whether, if those benefits are not compensation under Wis. Stat. § 59.10(3), the county board must correct its decision to require a two-thirds vote regarding the approval of a package of benefits that included both salary and the payment of health insurance premiums. Finally, you ask for an interpretation of the legal effect of the county board’s actions taken at its November 7, 2011, meeting.

¶ 2. I conclude that the provision of health, dental, and life insurance and the payment of insurance premiums for county supervisors are not “compensation” under Wis. Stat. § 59.10(3), and thus that the procedural requirements of that statute are inapplicable to motions or proposals to change those benefits. The county board need not correct its decision to require a two-thirds vote regarding the approval of benefits including salary and health insurance premium payments because salary is a form of compensation under Wis. Stat. § 59.10(3). I decline to give an opinion on the effect of the county board’s actions at its November 7, 2011, meeting because that question does not involve the interpretation of state law.

¶ 3. At the annual meeting of the Brown County Board on November 7, 2011, the board chair advised the board that a two-thirds vote was required on all supervisors’ salary and insurance items. Various motions to change the level of supervisors’ required insurance contributions were voted upon but failed to obtain a majority. One motion in the form of an amendment to a motion to increase supervisors’ salaries did obtain a simple majority: “[A]t the start of the second year of the next term for County Board Supervisors compensation same as

present; mileage same as present and health benefits paid 100% by Supervisors’.” This motion amended a motion “to increase the Supervisors’ salary by \$2,367’.” The motion was treated as not passed. The board ultimately passed two separate motions by a two-thirds vote, one concerning supervisors’ insurance, and one establishing supervisors’ salary for the supervisory term beginning in April 2012.

¶ 4. You first ask whether, in a county that is not self-organized, the provision of health, dental, and life insurance or the payment of insurance premiums for county supervisors is “compensation” within the meaning of Wis. Stat. § 59.10(3), which requires changes to compensation to be made by the county board (1) by two-thirds vote, (2) at the board’s annual meeting, and (3) limited to the term that begins after the next supervisory election. Wisconsin Stat. § 59.52(11)(c) authorizes a county board to “[p]rovide for individual or group hospital, surgical and life insurance for county officers and employees, and for payment of premiums for county officers and employees.” Wis. Stat. § 59.52(11)(c); *see also* Wis. Stat. § 66.0137(5)(b) (“a local governmental unit may provide for the payment of premiums for hospital, surgical and other health and accident insurance and life insurance for employees and officers, their spouses and dependent children[.]”).

¶ 5. In counties with a population of under 500,000 that are not self-organized, Wis. Stat. § 59.10(3)(f) governs the procedure for fixing supervisor compensation: “Any board may, at its annual meeting, by a two-thirds vote of all the members, fix the compensation of the board members to be next elected.” The question is whether changes to the providing of insurance and payment of insurance premiums are “compensation” within the meaning of Wis. Stat. § 59.10(3). The term “compensation” is not defined, but various subsections of the statute provide that supervisor compensation may be in the form of per diems, salary, or a combination of per diems and salary. Wis. Stat. § 59.10(3)(f), (i), and (j).

¶ 6. In *Cramer v. Eau Claire County*, 2013 WI App 67, the court of appeals held that the term “compensation” in Wis. Stat. § 59.22(1)(a)1., which governs the fixing of compensation for certain county elected officials other than supervisors, does not include fringe benefits. Wisconsin Stat. § 59.22(1)(a)1. describes the types of compensation that may be provided in terms of salary, fees, per diems, or a combination thereof: “[T]he annual compensation may be established by resolution or ordinance, on a basis of straight salary, fees, or part salary and part fees[.]”

¶ 7. The plaintiff in *Cramer* argued that “compensation” in Wis. Stat. § 59.22(1)(a)1. includes fringe benefits, but the court of appeals held that it does not. It concluded that the statute expressly describes only salary and fees, and that compensation had long been treated by the courts as excluding fringe benefits:

As our supreme court has observed, at least as recent as the 1920s, fringe benefits such as employer-paid pension and insurance contributions were

excluded from the definition of “compensation.” *State ex rel. City of Manitowoc v. Police Pension Bd.*, 56 Wis. 2d 602, 611-12a, 203 N.W.2d 74 (1973). The court explained that both salary and compensation historically had the same meaning because “the payment of cash for services rendered was the only form of compensation in general use.” *Id.* at 611. . . .

In summary, we conclude that WIS. STAT. § 59.22(1)(a)1.’s prohibition against increasing or diminishing certain elected county officials’ compensation during the term of office does not preclude adjustments to fringe benefits. Rather, the statute expressly protects only salaries and fees. We agree with Cramer that the statute has laudable purposes, primarily, “preventing the influence of partisan bias or personal feeling [by] members of the [county] board in fixing the salary.” *See Feavel v. City of Appleton*, 234 Wis. 483, 488, 291 N.W. 830 (1940) (quoting *Hull v. Winnebago Cnty.*, 54 Wis. 291, 293, 11 N.W. 486 (1882)). However, “[i]f, in view of modern day employment inducements, fringe benefits such as insurance premiums, pension fund contributions and perhaps others are to be included in the [compensation protection afforded to certain county elected officials], the legislature, as a matter of desirable public policy, can so provide. The court cannot.” *See Police Pension Bd.*, 56 Wis. 2d at 612a.

Cramer, 2013 WI App 67, ¶¶ 20-21.

¶ 8. The court’s reasoning in *Cramer* is equally applicable to the definition of “compensation” in Wis. Stat. § 59.10(3). Like Wis. Stat. § 59.22(1)(a)1., Wis. Stat. § 59.10(3) describes the “compensation” fixed pursuant to that provision as including only salary, per diems, or a combination thereof. The statutory provisions have a similar function: governing the fixing of compensation for particular elected county officials. Particularly given that parallel purpose, Wis. Stat. §§ 59.10(3) and 59.22(1)(a)1. should be construed consistently. It is thus my opinion that the term “compensation” in Wis. Stat. § 59.10(3) does not include the provision of insurance or county payment of insurance premiums.¹

¶ 9. Because the provision of insurance and county contributions toward insurance premiums are not forms of compensation under Wis. Stat. § 59.10(3), the procedural requirements of that statute do not apply to a proposed change to those benefits. A two-thirds

¹In OAG-5-11, ¶ 4 (December 19, 2011), I stated that, in self-organized counties, the provision of health insurance and the payment of health insurance premiums for supervisors are forms of compensation within the meaning of Wis. Stat. § 59.10(1)(c). Following *Cramer*, I conclude that that statement is no longer valid. That statement did not affect the conclusion reached in that opinion: that, in self-organized counties, state law does not prohibit either discontinuation of all health insurance for county supervisors or involuntary increases in health insurance premiums for county supervisors during their terms of office.

vote is not required; the motion or proposal need not be made at the county board's annual meeting; and changes may be made for supervisors beyond those to be next elected.

¶ 10. Your next question is whether the board is required to correct the determination made on the floor of the November 2011 meeting that a two-thirds vote of the board was required in order to effectuate a change in the level of supervisors' contributions toward their health insurance premiums. I conclude that it is not. The motion that failed because it obtained only a simple majority was a combined proposal for salary and insurance contributions. Because proposals affecting salary require a two-thirds vote under Wis. Stat. § 59.10(3)(f), the conclusion that a two-thirds vote was required was correct as to that motion. The board can avoid this issue in the future by voting separately on motions or proposals involving salary and those involving insurance.

¶ 11. Your last question is whether Brown County Supervisors are entitled to insurance through the county at the levels established by the board on November 7, 2011, based on actions taken by the Board:

The county executive vetoed the funding for the insurance for the board of supervisors during the budget process in the amount of \$64,638.00 which is the amount earmarked to pay for the insurance benefits of the county board [of] supervisors, effective April 17, 2012. . . . [W]ith the partial executive veto defunding the insurance benefits, but leaving the required benefit contribution in place at 50% for 2012 and 55% for 2013, this resulted in an approved benefit for the supervisors, but no appropriation to fund it. . . . [T]he insurance benefit remains in place as that was approved and not vetoed, but in order for the supervisors to now have this benefit [for the first year of the term] they would need to fund the entire amount of the premium contribution, as that portion was vetoed. . . . [I]f the supervisor pays the full amount of the insurance benefit, the county is obligated to grant the benefit which was adopted by the board.

¶ 12. This question does not involve the interpretation of state statutes. Attorney General opinions should not be used as a device to ascertain the meaning and intent of municipal ordinances, resolutions, or motions. 77 Op. Att'y Gen. Preface, No. 3.H. (1988). Such determinations must be made by the corporation counsel after consulting with the county officials involved.

¶ 13. I conclude that, in a county that is not self-organized under Wis. Stat. § 59.10(1), the provision of health, dental, and life insurance and the payment of insurance premiums for county supervisors are not compensation under Wis. Stat. § 59.10(3). The procedural requirements of that statute, including a two-thirds vote, taking action at the board's annual meeting, and limiting changes to the supervisory term beginning after the next supervisory election, do not apply to motions or proposals to change those benefits. Where a motion

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involves both salary and insurance, however, the requirements of Wis. Stat. § 59.10(3) apply because salary is a form of compensation under that statute.

Sincerely,

J.B. VAN HOLLEN
Attorney General

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