



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

December 19, 2011

OAG—5—11

Mr. Frank Volpintesta
Corporation Counsel
Kenosha County
912 - 56th Street
Kenosha, WI 53140

Dear Mr. Volpintesta:

¶ 1. You are concerned about health insurance costs for county board supervisors in your county, which is a self-organized county under Wis. Stat. § 59.10(1).

QUESTION PRESENTED AND BRIEF ANSWER

¶ 2. You ask whether state law prohibits either discontinuation of all health insurance for county supervisors in self-organized counties during supervisors' terms of office or modest but involuntary increases in health insurance premiums for county supervisors in self-organized counties during supervisors' terms of office.

¶ 3. In my opinion, the answer is no.

ANALYSIS

¶ 4. Your county is a self-organized county.¹ The compensation for supervisors in such counties is established under Wis. Stat. § 59.10(1)(c), which provides: "The method of

¹The distinction between self-organized counties and other counties is significant. When a county is not self-organized, the Legislature has a long history of requiring that the compensation of elective county officials, including supervisors, be established prior to their terms of office. Wisconsin Stat. § 59.22(1)(a)1. provides that the compensation of elected county officials other than supervisors is to be established prior to their first date for filing nomination papers. Wisconsin Stat. § 59.10(3)(f) and (i) specify that the compensation of supervisors is to be established at the annual meeting for supervisors "to be next elected[.]" The language contained in Wis. Stat. § 59.10(3)(f) and (i) providing that supervisor compensation is to be established at the annual meeting for supervisors that are subsequently elected has been strictly construed to mean that such compensation can be set at no other time and in no other way, unless the Legislature specifically provides otherwise. See *Feavel v. City of Appleton*, 234 Wis. 483, 488-89, 291 N.W. 830

compensation for supervisors shall be determined by the board.” A recognized dictionary such as BLACK’S LAW DICTIONARY may be used to ascertain the meaning of the term “compensation,” which is not defined in Wis. Stat. § 59.10(1)(c). *See State v. Polashek*, 2002 WI 74, ¶¶ 19-20, 253 Wis. 2d 527, 646 N.W.2d 330. BLACK’S LAW DICTIONARY 301 (8th ed. 2004) defines “compensation” as follows:

n. 1. Remuneration and other benefits received in return for services rendered; esp., salary or wages. . . .

“*Compensation* consists of wages and benefits in return for services. It is payment for work. If the work contracted for is not done, there is no obligation to pay. [**Compensation**] **includes** wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, **medical benefits**, disability, leaves of absence, and expense reimbursement.” Kurt H. Decker & H. Thomas Felix II, *Drafting and Revising Employment Contracts* § 3.17, at 68 (1991).^[2]

(Italics and bracketing in original; bolding supplied). *Cf.* 80 Op. Att’y Gen. 187, 189-90 (1992); 81 Op. Att’y Gen. 28, 36 (1993) (payment of health insurance premiums constitutes “compensation” within the meaning of Wis. Const. art. IV, sec. 26(2)). In my opinion, payment of health insurance premium contributions constitutes “compensation” within the meaning of Wis. Stat. § 59.10(1)(c).

¶ 5. Wisconsin Stat. § 59.10(1)(c) “vest[s] broad discretion in county boards of supervisors in self-organized counties to determine how supervisors in such counties will be compensated.” 79 Op. Att’y Gen. 122, 123 (1990), citing 65 Op. Att’y Gen. 16 (1976). Unlike Wis. Stat. § 59.10(3)(f)

(1940). *Accord Hull v. Winnebago County*, 54 Wis. 291, 293-94, 11 N.W. 486 (1882) (identifying the purposes behind the enactment of the language contained in what is now Wis. Stat. § 59.10(3)(f) and (i)):

It is quite clear that the statute contemplates that the power [to establish compensation for county supervisors] shall be exercised at a period remote from the time when such officers were to be chosen, in order to prevent the influence of partisan bias or personal feeling on the part of members of the board in fixing the salary. And, furthermore, it was probably deemed desirable that candidates for office should know precisely what compensation was attached to the office. Hence the statute provided that the board should fix at its annual meeting, the amount of annual salary which each county officer should receive.

See also 61 Op. Att’y Gen. 403, 404-05 (1972); 61 Op. Att’y Gen. 165, 166-67 (1972).

²Although this definition indicates that the ordinary and accepted meaning of “compensation” includes reimbursement for out-of-pocket expenses, the Legislature has provided for separate treatment of such expenses. *See* Wis. Stat. § 59.22(3).

and (i), Wis. Stat. § 59.10(1)(c) contains no requirement that supervisor compensation be established at the annual meeting for ensuing terms of office. In self-organized counties, supervisor compensation including health insurance premiums may be established or changed at any time.

¶ 6. Wisconsin Stat. § 66.0505(2), which provides as follows, prohibits only salary increases during the terms of office of local elected officials:

An elected official of any political subdivision, who by virtue of the office held by that official is entitled to participate in the establishment of the salary attending that office, shall not during the term of the office collect salary in excess of the salary provided at the time of that official's taking office.

Supervisors in self-organized counties do establish their own salaries. Wis. Stat. § 59.10(1)(c). Even if health insurance premiums constitute "salary" within the meaning of Wis. Stat. § 66.0505(2), the prohibition contained in that statute is limited to the acceptance of salary increases during the term. Because the statute does not prohibit salary decreases, it has no possible application to the elimination of health insurance premiums for county supervisors or to modest increases in such premiums for county supervisors.

¶ 7. Wisconsin Const. art. IV, sec. 26(2), prohibits increases or decreases in the compensation only of **state** public officials: "Except as provided in this subsection, the compensation of a public officer may not be increased or diminished during the term of office[.]" The constitutional prohibition applies only to certain public officers who are paid out of the state general fund. *See State ex rel. Singer v. Boos*, 44 Wis. 2d 374, 380, 171 N.W.2d 307 (1969); *State ex rel. Sachtjen v. Festge*, 25 Wis. 2d 128, 134-36, 130 N.W.2d 457 (1964) ("public officer" in Wis. Const. art. IV, sec. 26 has been interpreted virtually as if it read "state public officer"); *State ex rel. Smith v. Outagamie County*, 175 Wis. 253, 263-64, 185 N.W.2d 184 (1921); *The Board of Supervisors of Milwaukee County v. Hackett*, 21 Wis. 620, 625 (1867). County supervisor is not a statewide public office. County supervisors also are not paid out of the state general fund. The term "public officer" in Wis. Const. art. IV, sec. 26 does not include county officers. *See 79 Op. Att'y Gen. 149, 152-53 (1990)*. Wisconsin Const. art. IV, sec. 26(2), therefore has no application to county supervisors.

Mr. Frank Volpintesta
Page 4

CONCLUSION

¶ 8. I therefore conclude that state law does not prohibit either discontinuation of all health insurance for county supervisors in self-organized counties during supervisors' terms of office or modest but involuntary increases in health insurance premiums for county supervisors in self-organized counties during supervisors' terms of office.

Sincerely,

J.B. VAN HOLLEN
Attorney General

JBVH:FTC:cla