

N.D.A.G. Letter to Nelson (April 28, 1988)

April 28, 1988

Ms. Carol Nelson
Barnes County State's Attorney
P.O. Box 209
Valley City, ND 58072

Dear Ms. Nelson:

Thank you for your letter of April 20, 1988, inquiring whether a reduction in insurance benefits for elected county officials amounts to a reduction in the salary of those officials.

The facts contained in your letter as to the various events occurring with respect to health insurance benefits are not all together clear. However, I am assuming that the value of the insurance benefits have been reduced during the county officials' term of office.

N.D.C.C. § 11-10-10(4) states that the salary of a county official shall not be reduced during the official's term of office. Your letter mentions the North Dakota Supreme Court case of Ekblad v. Williams County, 289 N.W. 90 (N.D. 1939), which considered salary as the consideration paid to a person at regular intervals for services where such compensation was fixed and regularly paid. No North Dakota cases have been located discussing whether a fringe benefit such as payment of insurance premiums constitutes salary.

However, there are some cases from other jurisdictions addressing this issue. The Kentucky Supreme Court has held that employee benefits such as insurance and overtime are not considered salary or wages. Maynard v. Bullock, 692 S.W.2d 629 (Ky. 1985). A New York Supreme Court has held that salaries do not include fringe benefits relating to hospital insurance benefits. County of Erie v. Hoch, 270 N.Y.S.2d 225 (N.Y. App. Div. 1966).

Finally, there is the Ohio case of State ex rel. Parsons v. Ferguson, 348 N.E.2d 692 (Ohio 1976). In Ohio, a constitutional provision prohibits changes in compensation of public officials during their existing term of office. In Parsons, a county was paying for group medical and hospital plans for county officials. However, payment of those premiums were discontinued for certain officials. The officials aggrieved by this decision brought suit alleging a violation of the constitutional prohibition against changes in officials' compensation. The court concluded that a fringe benefit did not constitute a salary, but did constitute a form of compensation. As such, the elimination of the fringe benefit for hospital insurance was held to violate that state's constitutional provision

Obviously, the Ohio constitutional provision and the relevant portion of N.D.C.C. § 11-10-10(4) differ significantly as the former uses the term "compensation" and the latter

uses the term "salary." Nonetheless, Parsons is helpful in analyzing this issue as the court did conclude that hospital insurance premium benefits did not constitute a salary.

The cases cited from other jurisdictions strongly suggest that health insurance benefits do not constitute a salary and, as a result, would not come into play with respect to N.D.C.C. § 11-10-10(4). However, I cannot reach this conclusion as a matter of law and cannot issue an opinion holding as such. As noted in my letter of October 6, 1987, to Grant County State's Attorney Ratcliffe, a copy of which you already have in your possession, the facts are crucial in determining whether a particular form of compensation to an official constitutes a salary. As I can only issue opinions on questions of law rather than of fact, a formal opinion was not appropriate in that case and is not appropriate in this case as well.

The facts must be consulted to determine whether or not health insurance benefits were considered in the computation of the salary. Other facts may be important as to the manner in which compensation was arrived at for county officials.

I am sorry that I cannot provide you with the Attorney General's opinion you desire on this issue. Hopefully, the case law I have cited will help you in analyzing the facts and determining the answer to this question.

Sincerely,

Nicholas J. Spaeth

dfm