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May 10, 2000

Rex Carpenter
General Manager
Nebraska Rural Electric Association
PO Box 82048
Lincoln, NE 69501

Re: Director's Compensation/Health Insurance (Supplemental Opinion)

Dear Rex:

You have asked that I revisit the process for implementing the increase in director's salary and the authority to provide health insurance to directors, resulting from the adoption of LB 901.

With respect to the increase in a director's salary, perhaps it would be well to review the Constitutional prohibition against increasing salary during a director's term of office.

Article III, § 19, of the Nebraska Constitution provides in pertinent part as follows:

“ . . . nor shall the compensation of any public officer, including any officer whose compensation is fixed by the Legislature, be increased or diminished during his term of office except that, when there are . . . officers elected or appointed to a . . . board having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of the . . . board . . . may be increased or diminished at the beginning of the full term of any member thereof.”

The language of the Constitution is clear. It generally prohibits an increase in compensation during a public official's term of office. There is an exception where there are officers elected to a board having more than one member and the terms begins and ends at different times. In that case, the compensation of all members may be increased at the beginning of the full term of any member.

Accordingly, since public power directors are public officers whose compensation is fixed by the Legislature, the above Constitutional provision prohibits an increase in compensation until the beginning of the full term of any member of the board. Since this is an election year, the full term of at least one director begins in January of 2001. The resolution authorizing the increase must, however, be passed before the beginning of the full term of any board member. In other words, the resolution should be passed after the effective day of LB 901, July 12, 2000, but before December 31, 2000.

The second question presented is whether the health insurance benefits are considered compensation and therefore fall within the Constitutional prohibition of Article III, §19.

The Attorney General of the State of Nebraska, in Opinion #92062 dated April 15, 1992, determined that health insurance was not compensation within the meaning of *Neb. Rev. Stat. § 70-624.02*. On June 23, 1992, the Attorney General revisited his prior opinion and concluded that it was right; however, it was a close question and that a court "could decide that 'compensation' under §70-624.02 may be in any form so long as it is within the statutory dollar limit." In other words, health insurance may be considered compensation.

Both of the above opinions were given prior to the adoption of LB 182 in 1993 and LB 901 in 2000. LB 182 amended *Neb. Rev. Stat. § 70-624.03* to allow directors to participate as employees in district health insurance so long as the dollar amount of any premiums did not exceed the amount of compensation authorized under § 70-624.02. Under LB 182, it could be argued that health insurance may be considered compensation because of the not to exceed language. However, LB 901 amended *Neb. Rev. Stat. § 70-624.03* to authorize districts to provide directors' health insurance in addition to the amount of compensation authorized to be paid under § 70-624.02. Under this language, one may well argue that health insurance is not to be considered compensation.

Since LB 901 is the latest pronouncement of the Legislature, it could be argued that health insurance is not compensation, at least to the extent that it is not included in the maximum compensation limit specified in § 70-624.02. If it is not compensation, it does not fall within the prohibition of Article III, § 19 of the Nebraska Constitution and can be implemented anytime after the effective date of LB 901. Nevertheless, there has been no court interpretation of this new language, and the safer course of action would be to treat the health insurance premiums as compensation for the purpose of implementation. In that way, no one could contest whether a district has prematurely implemented the health insurance benefit. This would mean that a district should authorize the payment of premiums between July 12 and December 31, 2000, but not implement the benefit until after a director takes office and begins a new term in January of 2001.

Sincerely,

FOR THE FIRM:


Steven G. Seglin