

# CROSBY GUENZEL

ATTORNEYS AT LAW

THEODORE L. KESSNER  
WILLIAM D. KUESTER  
STEVEN G. SEGLIN  
ROCKY C. WEBER  
RICK G. WADE  
DAVID A. JARECKE  
MARY J HEWITT  
WILLIAM R. KUTILEK

134 So. 13<sup>TH</sup> STREET, SUITE 400  
LINCOLN, NEBRASKA 68508  
TELEPHONE: (402) 434-7300  
FACSIMILE: (402) 434-7303  
E-MAIL: info@crosbylawfirm.com

ROBERT C. GUENZEL (RETIRED)

ROBERT B. CROSBY (1911-2000)  
THOMAS R. PANSING (1917-1973)  
DONN E. DAVIS (1929-1998)

WRITER'S DIRECT DIAL NO:  
(402) 434-7324

WRITER'S E-MAIL ADDRESS:  
sgs@crosbylawfirm.com

January 22, 2001

Rex Carpenter  
General Manager  
Nebraska Rural Electric Association  
800 South 13<sup>th</sup> Street  
PO Box 82048  
Lincoln, NE 68501

Re: Health Insurance/Article III, § 19

Dear Rex:

You have asked whether health insurance benefits for directors of public power districts are compensation subject to the limitations of Article III, § 19 of the Nebraska Constitution. If health insurance benefits are compensation, then they cannot be increased or decreased until a newly elected board member takes 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, where there are... officers elected or appointed to a... board having more than one member and their 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 term “compensation” is not defined in Article III, § 19. Webster’s New World Dictionary (3<sup>rd</sup> ed. 1988 p. 284) defines “compensation” as “wages or remuneration.”

*Neb. Rev. Stat.* § 70-624.02 provides for the payment of expenses and compensation to directors of public power districts. The section provides in pertinent part:

“The members of the board of directors shall be paid their actual expenses, while engaged in the business of the district under the authority of the board of directors, and for their services, such compensation as shall be fixed by the board of directors.

The board of directors... may fix compensation at not to exceed [\$13,440] per year as to all members except the president or chairperson of the board and not exceed [15,120] per year as to the president or chairperson of the board. All salaries and compensation shall be obligations against and be paid solely from the revenue of the district. No director shall receive any other compensation from the district, except as provided in this section..."

(Emphasis added). *Neb. Rev. Stat.* § 70-624.03 provides that:

"The board of directors may establish a plan of insurance, designed and intended for the benefit of the employees of the district... Members of the board of directors of the district may be considered employees for the purposes of this section. The dollar amount of any health benefit of a member of the board of directors may be in addition to the amount of compensation authorized to be paid to such director pursuant to section 70-624.02."

The term "compensation" is not defined in either section. Nonetheless, when both sections are read together, it appears that health benefits are not wages or remuneration and therefore not compensation. If health benefits were compensation they would be authorized by a section other than § 70-624.02, in violation of § 70-624.02. The legality of Health benefits for public power district directors would then be at risk. Such an interpretation would render § 70-624.03 meaningless leading to an absurd result. See, *Professional Firefighters of Omaha, Local 385 v. City of Omaha*, 243 Neb. 166, 498 N.W. 2d 325 (1993) (in construing a statute, it is presumed that the Legislature intended a sensible, rather than an absurd result); *In re Interest of Rondel B.*, 249 Neb. 928, 546 N.W.2d 801 (1996) (in construing a statute, court must attempt to give effect to all of its parts, and if it can be avoided, no word, clause, or sentence should be rejected as superfluous or meaningless; it is not within the province of the court to read anything plain, direct, and unambiguous out of the statute. See also Opinion # 92062 of the Nebraska Attorney General dated April 15, 1992 (the term "compensation" in § 70-624.02 does not include health insurance benefits). In addition, § 70-624.03 states that health benefits may be in addition to compensation provided in § 70-624.02, indicating that they are something other than compensation.

The Internal Revenue Code (IRC) further supports the position that health benefits are not compensation. Section 61 of the IRC provides: "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived." The general rule requires a taxpayer to include any type of income, unless a specific exception or exclusion applies. Section 106 of the IRC contains the exclusion for contributions by an employer to health and accident plans. Section 106 provides: "Gross income of an employee does not include employer-provided coverage under a health or accident plan." Therefore, the question of whether insurance payments are included in the director's income for federal income tax purposes depends upon whether a director is an "employee" within the meaning of Section 106 of the IRC.

*Neb. Rev. Stat.* § 70-624.03 states that board members may be considered employees for health insurance purposes. Moreover, *Neb. Rev. Stat.* § 68-602(e) defines "employee" to include officers of political subdivisions for Social Security purposes. In addition, IRC § 3401(c) makes it clear that for purposes of income tax considerations including withholding, elected officials of

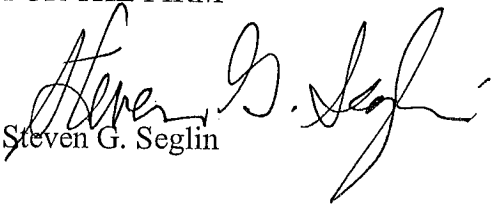
federal, state and local government units are to be treated as employees for tax purposes. That section provides:

“(c) Employee. For purposes of this chapter, the term “employee” includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof...”

In summary, there is a strong argument that can be made that health insurance benefits for directors of public power districts are not subject to the limitations contained in Article III, § 19 of the Nebraska Constitution. Statutory interpretation, the IRC and the opinion of the Nebraska Attorney General all tend to support the conclusion that health insurance benefits are not compensation for the purposes of Article III, § 19 of the Nebraska Constitution.

Sincerely,

FOR THE FIRM

  
Steven G. Seglin

SGS:rrk