

1983 WL 182004 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 20, 1983

*1 Honorable Joe R. Babb
Post Office Box 635
Gray Court, South Carolina 29645

Dear Councilman Babb:

You have asked whether Laurens County may lawfully pay to those of its employees who elect not to participate in the County-sponsored group health insurance plan an amount equal to the cost to the County of providing coverage under the plan to such employees. It is the opinion of this office that Laurens County may, but is not obliged, to make such payments in lieu of insurance coverage.

Under the provisions of the Home Rule Act, [§ 4-9-10 et seq., Code of Laws of South Carolina](#), 1976, as amended, counties are empowered, *inter alia*, 'to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people [.]' Section 4-9-30(7), *id.* [Article VIII, § 17 of the South Carolina Constitution](#) provides:

The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Power, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

The effect of this constitutional provision is to modify substantially the common law rule that counties and municipalities have only such powers as are expressly conferred upon them by statute. *See, e.g., Williams v. Wylie*, 217 S.C. 247, 60 S.E.2d 586 (1950). Thus, although there is no explicit authority for a county to do what Laurens County has chosen to do, a liberal construction of § 4-9-30(7), as mandated by [Article VIII, § 17 of the Constitution](#), supports the power of Laurens County to make cash payments equal to the cost to the County of providing health insurance to those of its employees who elect not to participate in the group health insurance plan provided to Laurens County employees at no expenses to them.^a

Although the County is free to make such cash payment to those of its employees who choose not to participate in the County-sponsored and funded group health insurance plan, the County is not required to do so. *See Woodham v. City of Jacksonville*, 276 So.2d 175 (Fla.App. 1973), and cases cited therein (public employee not entitled to payment in cash for accumulated unused leave in absence of statutory authority). County Council can, if it is so inclined, discontinue such practice at any time. *See generally* 67 C.J.S. *Officers and Public Employees* § 229 at p. 279 (1978).

I trust that I have satisfactorily addressed your question.

Sincerely,

Vance J. Bettis
Assistant Attorney General

Footnotes

^a [Section 4-11-170 of the Code](#), which provides:

No member of the governing body of any county shall vote for an extra allowance to any person who is paid by salary, nor shall the treasurer of any county knowingly pay to any such person any extra allowance[.]

does not compel a contrary conclusion. In paying to those of its employees who choose not to participate in the group health insurance plan an amount equal to the cost to the County of providing coverage to them, the County is merely placing these employees on an equal footing with those employees who elect to be covered under the group plan. Thus, the net cost to the County of the non-participating employees' total compensation 'package' is the same as the net cost of the participating employees' total compensation package. The provision of group health insurance to the County's employees is not a prohibited 'extra allowance'. Cf. 1970 Unpub. Op. Atty. Gen. dated January 28, 1970 (copy attached) (group health insurance benefits provided by county to county employees is 'nothing more than the payment of compensation'.) Consequently, the payment to employees who opt not to be insured under such a group plan of the cash equivalent of the cost to the County of covering them under the group plan is not a prohibited 'extra allowance' within the meaning of § 4-11-170. Cf. Green v. Galvin, 114 So.2d 187 (Fla.App. 1959) (payment to estate of deceased state employee of cash equivalent of accumulated unused annual leave is not 'extra compensation' prohibited by state constitution).

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