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STATE OF NEBRASKA
OFFICIAL
APR 20 1992
DEPT. OF JUSTICE

DATE: April 15, 1992

SUBJECT: Compensation for Public Power District Board Members

REQUESTED BY: Dannie Trautwein, Executive Director
Accountability and Disclosure Commission

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

Your legal staff has presented several questions to this office on your behalf relating to the inclusion of health coverage in the term "compensation" as it relates to public power district board members. The initial inquiry is whether "compensation" as used in Neb.Rev.Stat. § 70-624.02 (Reissue 1990) means salary alone or would include any health coverage provided.

Neb.Rev.Stat. § 70-624.02 states, in relevant part:

> The boards of directors of those districts with gross revenue of less than forty million dollars may fix compensation at not to exceed four thousand eight hundred dollars per year as to all members except the president and not exceeding five thousand four hundred dollars a year as to the president.
>
> . . . 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, during the term for which he or she was elected or appointed or in the year following the expiration of his or her term, . . .

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By use of the terms "salaries and compensation" in the above statute, it is clear that compensation is not limited to salary alone.

The Nebraska Supreme Court has held on numerous occasions that public employee retirement benefits or pensions constitute deferred compensation for services rendered. Halpin v. State Patrolmen's Retirement System, 211 Neb. 892, 320 N.W.2d 910 (1982); Gossman v. State Employees Retirement System, 177 Neb. 326, 129 N.W.2d 97 (1964); Wilson v. Marsh, 162 Neb. 237, 75 N.W.2d 723 (1956). "The benefit of a retirement system is a form of compensation additional to the regular salary of a member of the system with payment deferred to a later time." Wilson, supra at 251, 75 N.W.2d at 732. Similarly, health care benefits would also be a compensation to public employees.

However, Neb.Rev.Stat. § 70-624.02 states, "[n]o director shall receive any other compensation from the district except as provided in this section. . . ." The only compensation set out in this section is salary and reimbursement for actual expenses. Additionally, Neb.Rev.Stat. § 70-624.03 allows the board to establish a plan of insurance for employees of the district and employees' dependents. The fact that the Legislature did not include board members in this section reinforces the conclusion that compensation for board members of public power districts does not include health coverage.

You next ask whether the third paragraph of Neb.Rev.Stat. § 70-624.02 applies generally to all public power districts or only those with gross revenue of forty million dollars or more. Although the first sentence of this paragraph specifically references districts with a gross revenue of forty million or more, it is our determination that a careful review of this statute leads to the conclusion that the remainder of the third paragraph applies to public power districts in general.

Finally, you ask if a public power district has the authority to establish and pay for an insurance plan which covers board members and their families. In United Community Services v. The Omaha National Bank, 162 Neb. 786, 77 N.W.2d 576 (1956), the Nebraska Supreme Court looked at the creation of public power districts and addressed the powers and duties of these districts. The supreme court noted that Neb.Rev.Stat. § 70-602 (Reissue 1990) provides that a district, when created pursuant to the statutes, is a public corporation and political subdivision of the state. They further noted that the Legislature gave to public power districts all the usual powers of a corporation organized for public purposes. 162 Neb. at 793, 77 N.W.2d at 583. The court reviewed the creation and powers of municipal and public corporations in general and stated:

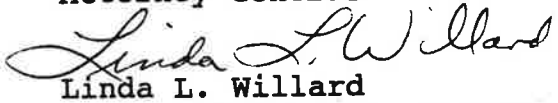
> "Companies chartered for the purpose of supplying the public with electricity * * * have such lawful rights and powers as are clearly and expressly granted, together with such implied * * * powers as are reasonably * * * necessary to enable them to exercise those expressly conferred, and to enable them to accomplish the objects of their creation. All rights and powers not thus granted are withheld."

162 Neb. at 794, 77 N.W.2d at 583-584.

Neb.Rev.Stat. § 70-624.03 (Reissue 1990) grants authority to the board to establish a plan of insurance for employees and dependents of the public power district. It does not grant authority to establish an insurance plan for the board of directors. Nor can it be argued that there is an implied power to establish an insurance policy for power board members in order to carry out the duties of the public power district. Therefore, it is our determination that public power district boards have no authority to establish plans of insurance for board members.

Sincerely,

DON STENBERG
Attorney General



Linda L. Willard
Assistant Attorney General

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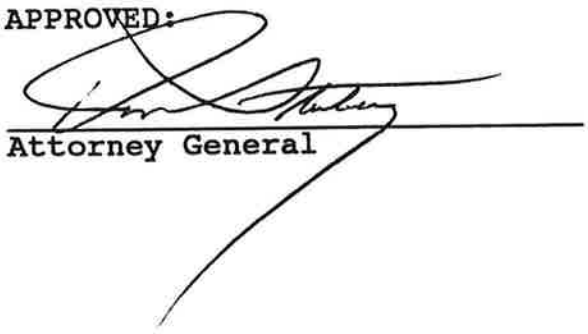

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