OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

December 3, 1996

Jim Ryan
ATTORNEY GENERAL

FILE NO. 96-039

COMPENSATION:
Discontinuance of Health Insurance
Coverage for Aldermen

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Honorable Charles G. Reynard
State's Attorney, McLean County
104 West Front Street, Room 605
Post Office Box 2400
Bloomington, Illinois 61702-2400

Dear Mr. Reynard:

I have your letter wherein you inquire whether, beginning with the next term of office, the city council of a city may elect to discontinue the provision of health insurance benefits to city aldermen, but permit those aldermen who were theretofore participants in the health insurance plan to continue to participate at their own expense. For the reasons hereinafter stated, it is my opinion that the city may, while terminating city-funded health insurance coverage for aldermen, permit those aldermen who were previously participating in the insurance plan to continue to do so at their own expense.

You have stated that for many years elected city officers have received, as part of their compensation, group

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health insurance benefits. The city has paid the full premium of each alderman's individual coverage, plus one-half of the premium for dependent coverage for those aldermen who desire such coverage. Recently, several aldermen have expressed the opinion that the city should not continue to provide such coverage since aldermen serve the city on only a part-time basis. Because some aldermen now participating in the city plan may have difficulty obtaining alternative coverage, however, it has been suggested that with the commencement of the new term on May 1, 1997, those aldermen currently participating who are reelected should be permitted to continue to participate in the group plan at their own expense, but that coverage should not be extended to any other aldermen.

The compensation of city officers is fixed pursuant to sections 3.1-50-5 and 3.1-50-10 of the Municipal Code (65 ILCS 5/3.1-50-5, 5/3.1-50-10 (West 1994)) and the provisions of the Local Government Officer Compensation Act (50 ILCS 145/1 et seq. (West 1995 Supp.)). In accordance with these statutes, the compensation of aldermen must be set by ordinance at least 180 days before the beginning of the terms of office of those officers. Health insurance benefits, if any, are a part of the compensation to be so fixed. (Ill. Atty Gen. Op. No. 94-022, issued October 25, 1994.) Therefore, the contemplated change in coverage must be made, if at all, by an ordinance adopted prior to November 1, 1996.

The proposed ordinance would establish the compensation of aldermen without including city payment for health insurance benefits. However, those individuals who have been receiving such benefits prior to May 1, 1997, will be permitted, pursuant to the insurance plan, to continue to receive coverage if they pay the premiums themselves. The adoption of such a provision will, in effect, redefine the term "employee" for purposes of the city's self-funded group health plan. You have expressed a concern that such a change will constitute an action on a contract for the benefit of current aldermen in violation of section 3 of the Public Officer Prohibited Activities Act (50 ILCS 105/3 (West 1994)) and section 3.1-55-10 of the Municipal Code (65 ILCS 5/3.1-55-10 (West 1994)).

It has long been held that the right of a public officer to compensation grows out of the rendition of service and not out of any contractual relationship. (Gathemann v. City of Chicago (1914), 263 Ill. 292, 295.) The setting of a salary for a public office is, therefore, a legislative act, and does not involve acting on a contract, as such. For that reason, the fixing of salaries for city officers does not implicate statutes which prohibit officers from having an interest in a contract. This will be true even when, as part of the compensation fixed, the officers, or some of them, are offered the opportunity to participate in a particular contract.

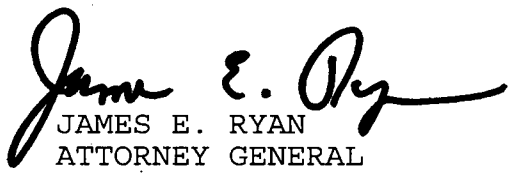
You have cited People v. Scharlau (1990), 141 Ill. 2d 180, with respect to a possible violation of statutes prohibiting interests in contracts. In that case, it was held that certain city commissioners and the city attorney violated the cited statutes when they negotiated and agreed to a consent decree settling a civil rights suit against the city. The agreement changed the form of city government from a commission form to an aldermanic form. The commissioners, in the agreement, assured themselves of future employment as department heads in the new government. The negotiated consent decree was deemed to be a contract. The action of the commissioners did not merely establish future compensation of city officers; it ensured the incumbent officers of future employment in different, non-elected positions with the city.

The circumstances you have described are readily distinguishable from those in People v. Scharlau. The current aldermen are not seeking to ensure themselves of a position of employment; they will receive no compensation pursuant to the proposed ordinance unless they are re-elected. Merely permitting an alderman who has previously participated in the group health plan to purchase benefits thereunder does not constitute an interest in a contract.

It has been suggested, because the proposed plan would treat aldermen already participating in the insurance plan differently from those elected later, that equal protection

concerns might arise. (Ill. Const. 1970, art. I, sec. 2; U.S. Const., amend. XIV.) However, absent a statute to the contrary, or the existence of a protected class, the classification of individuals for purposes of compensation is permissible if it has a rational basis. A compensation differential based upon the date of hire as "grandfathering" certain benefits is a practical method of easing a transition to a new system. (Petition of State Employees' Ass'n of New Hampshire, Inc. (1987), 129 N.H. 536, 529 A.2d 968.) Permitting persons who are currently participating in a health insurance plan to continue to participate, at their own expense, due to their potential inability to obtain alternative coverage, appears to be a rational method of easing the transition to non-participation of city aldermen in the plan. Consequently, in my opinion, no deprivation of equal protection of the laws will result from the proposed changes.

Sincerely,



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