

STATE OF TENNESSEE
OFFICE OF THE
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November 10, 2004

Opinion No. 04-162

County Cash Payments to Employee in Lieu of Paying Employee's Health Insurance Premiums

QUESTION

May a county pay its employees cash in an amount equal to the cost of insurance obtained by that employee from a source other than the county in lieu of paying the employee's premium under the county's health insurance policy?

OPINION

Counties have the authority to offer their officials and employees health and other types of insurance. Counties do not have the authority to make a cash payment to an official or employee who elects not to participate in the county insurance plan.

ANALYSIS

To place your question in context, we use the following hypothetical. A county chooses to pay the full premium for its employees' health insurance. Under certain circumstances, the county also intends to make a cash payment to an employee in lieu of paying the insurance premium. If an employee chooses health insurance coverage from a source other than the county, for example, through the spouse's place of employment, and thus elects not to be covered by the county's insurance plan, the county will then pay the employee an amount equal to (but not exceeding) the cost of the other insurance. The county pays this additional money to the employee through payroll and withholds income taxes and Social Security and Medicare taxes on this amount. The county requires sufficient proof of the existence of the other coverage before making the cash payments.

The Tennessee Constitution, Art. VII, § 1, establishes a county legislative body and gives the General Assembly the power and authority to prescribe its qualifications and duties.¹ The statutes prescribe counties' powers, duties, and liabilities. *Armitage v. Holt*, 21 Tenn. App. 273, 109

¹ Art. VII, § 1, of the Tennessee Constitution states in pertinent part as follows: "The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly."

S.W.2d 411, 412 (1937). The powers of counties, except those necessarily implied, must be found within statutory provisions passed by the General Assembly. *State ex rel. Citizens v. Lebanon & Nashville Turnpike Co.*, 151 Tenn. 150, 268 S.W. 627, 630 (1924).

We look then to the statutes authorizing counties to provide health insurance for their employees and officials. Counties may provide group life, hospitalization, disability, or medical insurance for all county employees and officials. Tenn. Code Ann. § 8-27-501(a). If the county chooses to provide the insurance coverage, in whole or in part, it may pay up to 100% of the health insurance premium. If the county chooses to provide less than 100%, it deducts from participating employees' and officials' salaries an amount sufficient to pay the remainder of the premium cost. Tenn. Code Ann. § 8-27-504. A county employee or official may accept or reject the county insurance coverage. Tenn. Code Ann. § 8-27-503. None of these statutes authorizes cash payments in lieu of the county payment of insurance premiums.

Nor do we believe that the counties derive implied powers from the insurance statutes to make such cash payments. The statutes permit counties to provide health and other insurance policies and pay up to 100% of the premiums, as the county chooses. Insurance is the focus; insurance is the benefit counties may provide for its officials and employees. The focus is not cash or providing cash as an equivalent for the insurance coverage. The statutes do not permit the counties to pay cash to employees and officials who elect not to be covered by the county insurance plan.²

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²Along with a lack of statutory authority, as we stated in an earlier opinion, once an employee declines the county's insurance coverage, there is no premium to be paid. Thus the county would have no legal basis for making a cash payment in lieu of paying the insurance premium. Op. Tenn. Att'y Gen. 04-031 (February 25, 2004).

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Requested by:

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