



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1992

Honorable Jimmy B. Wright
Lynn County Attorney
P. O. Box 729
Tahoka, Texas 79373

Letter Opinion No. 92-85

Re: Whether a county legally may pay a county employee \$200.00 per month in lieu of health insurance coverage if the employee has elected not to receive such coverage through the county's group health insurance plan, and related questions (RQ-360)

Dear Mr. Wright:

You request an opinion regarding the propriety of a county paying \$200.00 per month to those county employees who choose to forego health insurance coverage purchased through the county's group health insurance plan. You also ask whether, if such a system is legal, the law requires the county to pay the \$200.00 payment out of a separate health insurance account instead of the county's general fund. Additionally, you ask whether a county may discontinue its policy of paying \$200.00 in lieu of health insurance coverage if health insurance companies submitting annual bids refuse to provide group health insurance coverage to the county unless all county employees are covered, or if such health insurance companies offer to substantially lower their rates so long as all county employees are covered.

A county commissioners court is a court of limited jurisdiction; it can exercise only those powers that the state constitution and statutes confer upon it, either explicitly or implicitly. Attorney General Opinion V-1162 (1951) at 2 (and sources cited therein); *see* Attorney General Opinion MW-473 (1982) at 1 (and sources cited therein). Section 157.001 of the Local Government Code authorizes a commissioners court to provide county employees with hospitalization insurance coverage. *Cf.* Local Gov't Code §§ 157.002, 157.003 (authorizing county with population of at least 500,000 to self-insure). Additionally, article 3.51-2 of the Insurance Code authorizes a county to procure group health insurance policies and hospital, surgical, and/or medical expense insurance policies covering all of the county officials, employees, and retirees. Ins. Code art. 3.51-2(a). The county may pay all or any portion of the premiums on the policies using county funds. *Id.* art. 3.51-2(b).

Under the system you propose, the county would, in effect, offer county employees a choice between health insurance coverage and additional money. Section 157.001 of the Local Government Code and article 3.51-2 of the Insurance Code expressly permit a county to choose whether to offer its employees health insurance coverage (which offer the employee may accept or reject). These provisions do not, however, permit a county to offer its employees the choice between health insurance coverage and additional money.¹ Furthermore, we do not believe that one can imply such power from any of the relevant statutes. Accordingly, we conclude that the law does not permit a county to engage in the practice you propose. As we conclude that a county may not pay \$200.00 per month to those employees who opt out of the county's group health insurance plan, we need not answer your remaining questions.

S U M M A R Y

A county commissioners court is not authorized to offer county employees a choice between health insurance coverage and \$200.00 per month.

Very truly yours,


Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

¹Section 152.011 of the Local Government Code requires a county commissioners court to set the amount of compensation, office and travel expenses, and other allowances for county employees who the county wholly pays out of county funds. Employee benefits, such as health insurance, constitute a form of compensation if an employee's terms of employment include the payment of health insurance premiums. See 35 D. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 12.09, at 459 (Texas Practice 1989). Arguably, section 152.011 would permit a county to offer its employees \$200.00 per month in lieu of health insurance coverage. We believe, however, that the legislature's special, express provisions authorizing a county to provide its employees with health and hospitalization insurance (Local Gov't Code § 157.001; Ins. Code art. 3.51-2(a)(b)) preclude reliance on section 152.011. See Gov't Code § 311.026(b).