



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

August 25, 1993

Mr. Carlos A. Pereda, Jr.  
Maverick County Auditor  
P.O. Box 1246  
Eagle Pass, Texas 78853-1246

Letter Opinion No. 93-68

Re: Whether a county commissioner who has been removed from office for a felony conviction that is overturned on appeal is entitled to receive (1) the cash equivalent of premiums for health insurance covering the commissioner that the county would have paid if it had not terminated the commissioner's insurance while his case was pending and (2) the amount of past contributions the county has made on his behalf to his retirement plan (ID# 18456)

Dear Mr. Pereda:

Your request letter involves a former county commissioner of your county who was convicted of a felony in September 1988 and subsequently was removed from office, apparently because of the felony conviction, by order of the district judge. The former county commissioner (the "commissioner") has demanded payment from the county of (1) the cash equivalent of premiums for health insurance covering the commissioner that the county would have paid if it had not terminated the commissioner's insurance upon his removal from office and (2) the amount of past contributions the county has made on his behalf to his retirement plan before his removal from office and contributions that the county would have made on his behalf to his retirement plan after his removal if he had remained in office.

According to your request letter, while the commissioner's criminal case was on appeal, the county deposited into an escrow account the commissioner's gross salary (without deducting taxes or the commissioner's five percent contribution to his retirement plan) but did not escrow its matching five-percent portion of the contribution to the commissioner's retirement plan. Upon the commissioner's removal from office, the county terminated the commissioner's health insurance and ceased paying his health-insurance premiums.

In 1991, the commissioner withdrew all funds from his retirement account in the Texas County and District Retirement System, excluding the funds that the county had contributed before the commissioner's conviction as the county's portion of his retirement

contributions. In 1992, the commissioner's conviction was reversed and an order of acquittal was rendered. He then, on or about November 12, 1992, requested and was paid all the funds in the escrow account plus interest.

The commissioner now has sent your county a letter demanding that the county pay him the amount of all the county's matching portion of his retirement contributions and all the health-insurance premiums that the county would have paid if he had not been removed from office. The letter states the commissioner's belief that the demanded fringe benefits "come with the wages" due him as an elected official.

We first understand you to ask whether the commissioner is entitled to be paid the amount of health insurance premiums that would have accrued if his insurance had not been terminated. We assume, without deciding, that the commissioner would have been entitled to health insurance coverage during some period following the termination of his insurance and, accordingly, that the county would have been obligated to pay his insurance premiums during that period. You state without citation to authority that county employees are not entitled to receive cash payment in lieu of health insurance premiums if those employees choose not to be covered by the insurance. This office concluded in Letter Opinion No. 92-85 (1992) that a county commissioners court may not offer county employees a choice between health-insurance coverage or a cash payment in lieu thereof. We assume that your county has not made such an offer to the commissioner. Your request does not say when, if ever, the commissioner chose not to be covered by health insurance.

Even assuming that the commissioner did not choose not to be covered by health insurance, we find no merit in his contention that the unpaid insurance premiums somehow are due him. Because the benefit to a covered employee is not the amount of the health insurance premiums paid but rather is the reduction in costs payable by the employee for covered care, the amount of damages for any breach by the county of an obligation to insure the commissioner would be based on costs of care that would have been covered by insurance rather than on the amount of the unpaid premiums. We need not address whether there was any breach of any obligation to continue insuring the commissioner because he has not alleged damages (costs incurred as a result of lack of insurance) that would entitle him to money from the county. We conclude that the commissioner is not entitled to compensation for the premiums that would have been paid had his health insurance not been terminated.

We also understand you to ask whether the commissioner is entitled to receive cash payment of the amount of matching contributions the county has made on his behalf to his retirement plan before his removal from office and contributions that the county would have made on his behalf to his retirement plan after his removal if he had remained in office. You state without citation to authority that during the period in which the

county was not depositing its portion of retirement contributions into the commissioner's escrow account, both portions were required to be deposited under the Texas County and District Retirement System (the "retirement system").

Regardless of whether the county was obligated to deposit a matching portion under the retirement system, the commissioner is not entitled to such funds by virtue of the law governing the system. Section 842.108 of the Government Code provides:

A person who is not an employee of any participating subdivision and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual account in the employees saving fund, and the retirement system shall close the account.

The commissioner invoked this section in 1991 when he withdrew all funds from his account. The employees saving fund is comprised of the types of deposits listed in section 845.306 of the Government Code; none of those items include the county's matching contribution. We conclude that the Government Code does not support the commissioner's claim of entitlement to the matching contributions that have been or should have been made for his benefit.

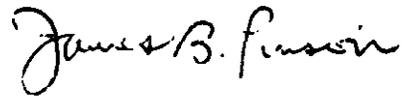
Your letter asks us whether the county is further obligated to the commissioner. We regret that we cannot answer this question because it would involve fact questions, which we are not authorized to resolve in the opinion process. For example, the county might be further obligated to the commissioner if his removal from office was wrongful and was the proximate cause of his lost health-care coverage and retirement benefits. The information you have given us does not on its face present a question of the county's further obligation to the commissioner as a matter of law; we find nothing in the Government Code that requires further payment to the commissioner.

### S U M M A R Y

A county commissioner who has been removed from office for a felony conviction that is overturned on appeal is not entitled to compensation for health-insurance premiums that would have been paid had his insurance not been terminated. Because the commissioner withdrew all of the accumulated contributions credited to his individual account in the employees saving fund after being removed from office, the Government Code does not support the commissioner's claim of entitlement to any matching contributions that the county did make or should have made to the County and District Retirement System for his benefit.

The question of whether a county commissioner who has been removed from office for a felony conviction that is overturned on appeal is entitled to receive compensation for health-care costs that would not have been incurred if his health insurance had not been terminated or the amount of past contributions the county has made on his behalf to his retirement plan involves issues of fact and therefore is beyond the scope of the opinion process.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson  
Assistant Attorney General  
Opinion Committee