



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

August 5, 2008

Mark B. Taylor, Esq.
Accomack County Attorney
23296 Courthouse Avenue, Suite 103
Accomac, Virginia 23301

Dear Mr. Taylor:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

When a board of supervisors has established compensation for its members pursuant to § 15.2-1414.3, you ask whether the board also may grant to such members, as a fringe benefit, family health insurance coverage that is the same as provided to the county's administrator and attorney.

Response

It is my opinion that § 15.2-1414.3(4) authorizes the board of supervisors to adopt a resolution granting its members, as a fringe benefit, family health insurance coverage that is the same as provided to the county's administrator and attorney.

Background

You advise that the Accomack County Board of Supervisors has adopted the alternative method for establishing the salaries of the Board as authorized by § 15.2-1414.3.¹ Furthermore, you advise that the Board has adopted a resolution granting its members a fringe benefit consisting of paid family health insurance coverage. You state that the County's administrator and attorney currently receive the same family health insurance coverage as a fringe benefit. You note that all other Accomack County employees receive fully paid health coverage for themselves, but not for family members. Finally, you state that all County health insurance coverage is provided under the same plan with the difference being the portion of the premium the County pays as a fringe benefit.²

¹ See *infra* "Applicable Law and Discussion."

² Section 2.2-505(B) requires that an opinion request from a county attorney "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." I note that correspondence raising other issues in connection with this opinion request was received by this Office. As indicated, § 2.2-505(B) requires a county attorney to provide a memorandum of law in connection with his opinion request. This opinion addresses the legal question set forth in your request letter and accompanying memorandum.

Applicable Law and Discussion

Section 15.2-1414.3(4) provides that:

In addition to and without regard for the salary limits herein set out, any board of supervisors by resolution may grant to its members any or all of the fringe benefits in the manner and form as such benefits are provided for county employees or any of them.

The power of a local governing body, unlike that of the General Assembly, “must be exercised pursuant to an express grant”³ because “the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication.”⁴ This rule is corollary to the Dillon Rule that municipal corporations are similarly limited in their powers.⁵ “Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation.”⁶ “The manifest intention of the legislature, clearly disclosed by its language, must be applied.”⁷ “[T]ake the words as written” ... and give them their plain meaning.”⁸

The operative language in § 15.2-1414.3(4) is the use of the word “or” in the phrase “as such benefits are provided for county employee or any of them.” “Generally, phrases separated by a comma and the disjunctive ‘or’ are independent.”⁹ The use of the disjunctive results in alternatives that must be treated separately. Thus, the word “or” in § 15.2-1414.3(4) is evidence of the intent that what follows the “or” is meant to be separate and independent from what preceded the “or.” Consequently, the General Assembly clearly and unambiguously has authorized a board of supervisors to adopt a resolution granting to its members the same fringe benefits provided to all county employees. Furthermore, a board of supervisors may adopt a resolution granting its members the same fringe benefits provided to a lesser number of county employees in instances where different fringe benefits are provided to the different groups of county employees.

³ Nat’l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

⁴ Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975).

⁵ *Id.*

⁶ Last v. Va. State Bd. of Med., 14 Va. App. 906, 910, 421 S.E.2d 201, 205 (1992).

⁷ Barr v. Town & Country Props., Inc., 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting Anderson v. Commonwealth, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

⁸ Adkins v. Commonwealth, 27 Va. App. 166, 169, 497 S.E.2d 896, 897 (1998) (quoting Birdsong Peanut Co. v. Cowling, 8 Va. App. 274, 277, 381 S.E.2d 24, 26 (1989) (quoting Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985))).

⁹ Lampkins v. Commonwealth, 44 Va. App. 709, 717, 607 S.E.2d 722, 726 (2005) (refusing to find that, where two phrases were separated by “or,” first phrase modified second phrase); *see also* Smoot v. Commonwealth, 37 Va. App. 495, 501, 559 S.E.2d 409, 412 (2002) (noting that word “or” connects parts of sentence, but disconnects their meaning; disjunctive results in alternatives, which must be treated separately).

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Conclusion

Accordingly, it is my opinion that § 15.2-1414.3(4) authorizes the board of supervisors to adopt a resolution granting its members, as a fringe benefit, family health insurance coverage that is the same as provided to the county's administrator and attorney.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive, flowing style with a large, stylized "R" and "M".

Robert F. McDonnell