



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

**DAN MORALES**  
ATTORNEY GENERAL

August 30, 1995

Honorable John Vance  
Dallas County District Attorney  
411 Elm Street  
Dallas, Texas 75202

Letter Opinion No. 95-056

Re: Whether a county is required to provide medical insurance benefits, offered as part of the county's cafeteria plan benefits program, to district judges whose jurisdiction is limited to that county (ID# 27381)

Dear Mr. Vance:

You ask whether Dallas County is required to provide medical insurance coverage to the district court judges of Dallas County under the cafeteria plan benefits program the county offers to its employees. The Dallas County Commissioners Court became aware in late 1993 that district judges receive medical coverage from the state, in addition to any they receive under the Dallas County cafeteria plan. We understand the commissioners desire to terminate county contributions to the cafeteria plan for the district judges. Your office has concluded that the county is not required to provide for the district judges medical coverage and contributions therefor. We agree.

You indicate that your query is similar to that resolved in Attorney General Opinion DM-337, issued in response to a question from the Potter County attorney. For budgetary reasons, the Potter County Commissioners Court proposed to stop providing medical coverage for its district judges as each current incumbent eventually is replaced. Attorney General Opinion DM-337 (1995) at 5. Thus, Attorney General Opinion DM-337 considered whether section 157.002 of the Local Government Code or any other provision of law precluded the commissioners court from terminating the district judges' medical coverage.

The opinion examined section 157.002(a)(2) of the Local Government Code, which authorizes, but does not require, a commissioners court to provide medical coverage for, among others, district officers "if their salaries are paid from funds of the county . . ." Because Potter County is statutorily required to supplement the salary its district judges receive from the state, section 157.002(a) enables the county to provide medical coverage for the judges. *Id.* at 4-5. Whether the county does so, we stated, "is a

matter wholly within the discretion of the county commissioners court." *Id.* at 5. Section 157.002 thus does not preclude the county from discontinuing medical coverage for its district judges. *See id.*

We concluded that, unless a suspect class is involved, the commissioners court may terminate the district judges' medical coverage without contravening the federal Equal Protection Clause if two criteria are met. *Id.* at 7. First, the commissioners court must have a legitimate purpose for phasing out medical coverage for district officers. *Id.* Second, the commissioners court reasonably must believe that excluding new officeholders from medical coverage while maintaining medical coverage on incumbent district judges will promote that purpose. *Id.* We further determined that terminating medical coverage in the situation before us would violate the Americans with Disabilities Act, 42 U.S.C. ch. 126, only if the termination discriminates against a qualified individual on the basis of disability. Attorney General Opinion DM-337 (1995) at 8.

In accordance with our conclusion in Attorney General Opinion DM-337, we here conclude that section 157.002(a)(2) of the Local Government Code does not require Dallas County to provide medical coverage to district judges serving the county, nor does it preclude the county from discontinuing such coverage. Whether the county's termination of medical coverage for the district judges would contravene either the Equal Protection Clause or the Americans with Disabilities Act are fact questions that we cannot resolve in the opinion process. *See* Attorney General Opinion DM-337 (1995) at 7-8 (and sources cited therein).

You suggest, however, that the situation Dallas County faces may be distinguishable from that discussed in Attorney General Opinion DM-337 for two reasons. First, you state that the boundaries of the judicial districts about which you ask are coextensive with Dallas County. We believe this fact is irrelevant to whether the county must provide medical coverage to the district judges under section 157.002 of the Local Government Code.

Second, you state that Dallas County has adopted a cafeteria plan under which an officer or employee covered under another group medical expense plan may elect out of coverage under the traditional plan and have his or her contributions credited to a flex-pay account for reimbursement of medical expenses, child-care expenses, or both. Section 155.042 of the Local Government Code expressly permits the commissioners court of a county to establish "a program to provide benefits that qualifies as a cafeteria plan under Section 125 of the federal Internal Revenue Code of 1986 (26 U.S.C. [§] 125) . . . ." The district judges in Dallas County contend that section 155.043 of the Local Government

Code requires the county, if it provides such a cafeteria plan to Dallas County employees and officers, also to provide the cafeteria plan to the district judges.

Section 155.043(a) provides as follows:

If the commissioners court establishes a cafeteria plan program under this subchapter, the court shall authorize county employees to enter into voluntary agreements with the county to reduce the periodic compensation paid the employees by the county by amounts to be used to finance benefit options provided under the cafeteria plan. An authorization under this section must be made available to all employees of the county.

For purposes of chapter 155, subchapter C of the Local Government Code, which consists of sections 155.041 through 155.044, inclusive, a county employee is "a person who receives compensation for service performed, other than as an independent contractor, for a county, for a precinct or other unit of a county, or for a county officer acting in an official capacity." Local Gov't Code § 155.041.

In our opinion, the legislature intended subchapter C to apply to only an employee or officer who, in return for the services he or she performs for the county, is compensated solely from the county. We do not believe the legislature intended subchapter C to apply to an officer, such as a district judge, who receives a salary from the state and a salary supplement from the county in which he or she serves. We believe the legislative history supports this construction of the subchapter.

The legislature enacted the statutory predecessor to chapter 155, subchapter C, V.T.C.S. art. 6252-3c, in 1987. See Act of May 29, 1987, 70th Leg., R.S., ch. 944, § 1, 1987 Tex. Gen. Laws 3150, 3152. The bill was introduced to allow county employees, for the first time, to participate in a cafeteria plan as described in section 125 of the Internal Revenue Code. House Comm. on County Affairs, Bill Analysis, H.B. 1370, 70th Leg. (1987). At that time, according to the bill analysis, county employees did not have the option of participating in a cafeteria plan. *Id.*

During the same session, the legislature amended the Texas Employees Uniform Group Insurance Benefits Act, Ins. Code art. 3.50-2, by, among other things, adding sections 13B and 16B. See Act of May 15, 1987, 70th Leg., R.S., ch. 204, §§ 5, 7, 1987 Tex. Gen. Laws 1479, 1481, 1482. Generally, under the Texas Employees Uniform Group Insurance Benefits Act, every full-time state employee automatically receives medical coverage. Ins. Code art. 3.50-2, § 13(b); see also *id.* § 16 (creating in state treasury Employees Life, Accident, and Health Insurance and Benefits Fund). Section

13B authorizes the board of trustees of the Employees Retirement System of Texas, *see Id.* § 3(a)(11) (defining "trustee"), to implement a cafeteria plan<sup>1</sup> in which an employee of the state may participate. Section 16B(a) creates the State Employees Cafeteria Plan Trust Fund in the state treasury.

An employee, for purposes of article 3.50-2 of the Insurance Code, is "any appointive or elective state officer or employee in the service of the State of Texas . . ." <sup>2</sup>*Id.* § 3(a)(5)(A). In our opinion, a district judge is an employee for purposes of article 3.50-2. Indeed, we have been informed that district judges receive medical coverage through the board of trustees of Employees Retirement System, the trustee of the Texas Employees Uniform Group Insurance Benefits plan, and may participate in the cafeteria plan established pursuant to article 3.50-2, sections 13B and 16B.

As we have suggested, the legislature enacted the statutory predecessor to chapter 155, subchapter C of the Local Government Code in 1987 to make available to county employees, a class of employees that was ineligible at that time to participate in any other cafeteria plan, a cafeteria plan benefits program. District judges would not have been part of this class of individuals because they are eligible to participate in a cafeteria plan under Insurance Code article 3.50-2, which plan the legislature also approved in 1987. We therefore conclude that the legislature did not intend to include district judges within the scope of the term "county employee" for purposes of Local Government Code chapter 155, subchapter C.

Thus, nothing in chapter 155, subchapter C of the Local Government Code applies to district judges. We are unaware of any other statute, nor do you cite any, that would preclude Dallas County from terminating its district judges' participation in the Dallas County cafeteria plan. We therefore conclude that the county is not required by statute to provide medical insurance benefits, offered as part of the county's cafeteria plan benefits program, to district judges whose jurisdiction is limited to the county. The county should, of course, consider whether the termination of medical coverage will violate the constitutional guarantee of equal protection or the Americans with Disabilities Act.

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<sup>1</sup>Article 3.50-2, section 3(a)(17) defines the term "cafeteria plan" consistent with a cafeteria plan defined and authorized by section 125 of the Internal Revenue Code, 26 U.S.C. § 125. Thus, the term "cafeteria plan" has an identical meaning in chapter 155, subchapter C of the Local Government Code and in V.T.C.S. article 3.50-2.

<sup>2</sup>Effective August 28, 1995, article 3.50-2 of the Insurance Code will define "employee" as any appointive or elective officer or employee . . . See Act of May 26, 1995, 74th Leg., R.S., ch. 586, §§ 38, 51, 1995 Tex. Sess. Law Serv. 3385, 3397-98, 3401.

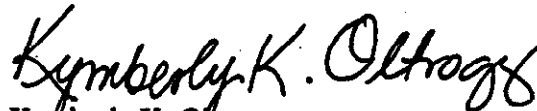
**S U M M A R Y**

As this office concluded in Attorney General Opinion DM-337 (1995), section 157.002(a)(2) of the Local Government Code does not require a county to provide medical coverage to district judges serving the county. Whether a county's termination of medical coverage for the district judges would contravene either the constitutional guarantee of equal protection or the Americans with Disabilities Act, 42 U.S.C. ch. 126, requires the resolution of fact issues.

The fact that the boundaries of the judicial districts are coextensive with the boundaries of the county is irrelevant to determining the county's obligation to provide medical coverage for the district judges under section 157.002 of the Local Government Code. Furthermore, chapter 155, subchapter C of the Local Government Code, which authorizes the commissioners court of a county to establish a program to provide benefits to county employees through a cafeteria plan under 26 U.S.C. § 125, does not apply to district judges.

Consequently, a county is not required to provide medical insurance benefits, offered as part of the county's cafeteria plan benefits program, to district judges whose jurisdiction is limited to the county.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee