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| OPINION | : | No. 07-202 |
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| of | : | July 10, 2008 |
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THE HONORABLE THOMAS McCLINTOCK, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

May a municipal water district provide paid health benefits to former elective members of its legislative body who served in office after January 1, 1981, but whose terms began before January 1, 1995, and whose total service at the time of termination was not less than 12 years, where (1) in 1993, the water district ceased providing paid health benefits for current or future members after the expiration of their terms, and (2) in 2000, the water district reinstated its previous practice of providing paid health benefits for such members after the expiration of their terms?

CONCLUSION

A municipal water district may provide paid health benefits to former elective members of its legislative body who served in office after January 1, 1981, but whose terms began before January 1, 1995, and whose total service at the time of termination was not less than 12 years, where (1) in 1993, the water district ceased providing paid health benefits for current or future members after the expiration of their terms, and (2) in 2000, the water district reinstated its previous practice of providing paid health benefits for such members after the expiration of their terms, provided that the former members received paid health benefits from the water district while serving on its legislative body prior to January 1, 1994.

ANALYSIS

The Legislature has enacted a comprehensive statutory scheme authorizing local government agencies (including municipal water districts) to provide group insurance benefits for their employees.¹ These “health and welfare” benefits may include medical, dental, life, legal expense, and income protection plans.² An agency may provide these benefits to any officer or employee, active or retired, who elects to accept the benefits and authorizes the agency to deduct uncovered charges from their compensation.³

Local agencies may also provide health and welfare benefits to some of its former elected officials. Over time, the law has imposed various conditions on agencies’ ability to pay for its former officials’ current benefits. From 1982 until 1994, local agencies could continue to pay for the benefits of its former elected members, as long as the member had served at least twelve years in office and had served some time after January 1, 1981.⁴ In 1994, the Legislature imposed new conditions: While an agency that had already been paying for the benefits of former members could continue to do so, agencies that had not been paying for such benefits before 1994 would be permitted to offer them only on a self-paid

¹ Govt. Code §§ 53200-53210.

² *Id.* at § 53200(d).

³ *Id.* at § 53201(a).

⁴ *Id.* at § 53201(b). Former members who have completed one or more terms of office, but less than twelve years, may participate in the agency’s group insurance plans on a self-pay basis.

basis in the future.⁵

The crux of the question here is how the 1994 amendments apply to an agency that stopped paying for benefits to its former members before the legislation took effect, and then resumed paying for such benefits later. The material facts we consider are as follows: Until 1993, the water district provided paid health benefits to its former directors. In 1993 the water district stopped paying for health benefits for its current and future board members when their terms expired. Some seven years later, in 2000, the water district once again provided paid health benefits to its former board members.

The focus of our statutory analysis is Government Code section 53201(c)(3),⁶ which

⁵The 1994 amendments added subdivision (c)(1) to Government Code section 53201, which reads now as follows:

(c)(1) Notwithstanding any other provision of law, a legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body [before] January 1, 1995, shall not provide those benefits to any person first elected to a term of office that begins on or after January 1, 1995, unless the recipient participates on a self-pay basis, as provided in subdivision (b).

(2) A legislative body of a local agency that did not provide benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, shall not provide those benefits to former elective members of the legislative body after January 1, 1994, unless the recipients participate on a self-pay basis.

(3) A legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, may continue to provide those benefits to those members who received those benefits before January 1, 1994.

⁶ Subdivision (b) of section 53201 is satisfied because the question assumes that the former elective members at issue served in office after January 1, 1981, and have served at least twelve years. Subdivision (c)(1) does not apply here because the former elective members began their first terms of office before January 1, 1995. Subdivision (c)(2) does not apply either, because the water district provided benefits to former elective members before January 1, 1994.

states:

A legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, may continue to provide those benefits to those members who received those benefits before January 1, 1994.

First, we note that the last phrase in subdivision (c)(3), “members who received those benefits before January 1, 1994,” expressly refers to “members,” not “former members.” We therefore construe subdivision (c)(3) as permitting post-service health benefits to be extended to elective board members who received paid health benefits while serving on the board, prior to January 1, 1994.

Further, where subdivision (c)(3) states that the legislative body of the local agency “may continue to provide those benefits to those members,” we believe that the word “continue” refers to a continuation or extension *into retirement* of those benefits received by a member while serving on the legislative body. We have no reason to believe that the language was intended to require the legislative body to have *continuously maintained* a policy of providing paid health benefits to former members of the legislative body over a period of time. Thus, the water district’s 1993 action did not render the board members statutorily ineligible for paid health benefits following the expiration of their terms of office. Rather, it prevented them from receiving such benefits as a matter of water district policy. When the water district decided in 2000 to reinstate its former policy, the intervening interruption of those benefits had no further bearing upon the eligibility of the directors to receive paid health benefits when they became “former members.”

In 1994, when the Legislature chose to curtail the practice of providing former elective members with paid health benefits, it did so in a selective manner.⁷ The statute itself does not require a water district to have had a conforming policy in place on a specific date.

Accordingly, we conclude that a municipal water district may provide paid health benefits to former elective members of its legislative body who served in office after January 1, 1981, but whose terms began before January 1, 1995, and whose total service at the time of termination was not less than twelve years, where (1) in 1993, the water district ceased providing paid health benefits for current or future members after the expiration of their terms, and (2) in 2000, the water district reinstated its previous practice of providing paid health benefits for such members after the expiration of their terms, provided that the former

⁷ Govt. Code § 53201(b), (c).

members received paid health benefits from the water district while serving on its legislative body prior to January 1, 1994.
