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ATTORNEY GENERAL OPINION NO. 89- 122

Mr. Ward Loyd  
103 W. Chestnut Street  
Garden City, Kansas 67846-5404

Re: Cities and Municipalities--Retirement Systems;  
Group Health Care Benefits for Retirants--Group  
Health Care Benefits Plan

Synopsis: The intent of K.S.A. 1988 Supp. 12-5040 is to expand the eligibility of retirants to continue coverage under an employer-sponsored health care benefits plan beyond the 18-month continuation period mandated by the Consolidated Omnibus Budget Recommendation Act. A retirant remains eligible for coverage under this provision until (1) the retirant reaches age 65, (2) the retirant fails to make required premium payments on a timely basis, or (3) the retirant becomes eligible for coverage under the plan of another employer. Cited herein: K.S.A. 1988 Supp. 12-5040.

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Dear Mr. Loyd:

As attorney for the Board of Education, Unified School District No. 371, Gray County, Kansas, you request our opinion regarding the appropriate construction and application of K.S.A. 1988 Supp. 12-5040. Specifically, you ask whether a 44 year old former teacher will remain eligible for coverage under the employer's health care benefits plan until he reaches the age of 65.

The rules of construction of a statute are useful in determining the true intention of the law. However, the rules maybe used only in cases of doubt, and are never to be used to create doubt but only to remove it. Willmeth v. Harris, 195 Kan. 220 (1965); 82 C.J.S. Statutes §311, p. 526. Where the language of a statute is plain and unambiguous there is no occasion for construction, and the statute must be given effect according to its plain and obvious meaning. Matter of Estate of Estes, 239 Kan. 192 (1986); 82 C.J.S. Statutes §322, p. 577. Where an ambiguity exists, the legislative history of the statute may be construed to determine intent. State v. Thompson, 237 Kan. 562 (1985); 82 C.J.S. Statutes §355, p. 746.

The provisions of K.S.A. 1988 Supp. 12-5040 are clear on their face and must therefore be given effect according to their plain and obvious meaning. Certain employees of a local government which provides an employer-sponsored group health care benefits plan are eligible to continue coverage under the group health care benefits plan if the employee files a written application with the employer's clerk or secretary within 30 days of retirement. The coverage will cease only when (1) the retired employee reaches age 65, (2) the retired employee fails to make required premium payments on a timely basis, or (3) the retired employee becomes eligible for coverage under the plan of another employer. There are no provisions allowing for the cessation of coverage after a stated period of time.

Even if the statute was not clear on its face, it is clear from the legislative history that the legislature intended to provide for coverage beyond the 18-month continuation period mandated by the Consolidated Omnibus Budget Reconciliation Act (COBRA). The provisions of K.S.A. 1988 Supp. 12-5040 are based upon recommendations outlined in the November 13, 1987, report of the Martin E. Segal Co. issued to the Legislative Coordinating Council and Special Committee on Ways and Means. The Segal Company report provided information regarding the health benefit coverage available at the time for KPERS retirants, options available to the legislature in expanding coverage beyond the 18-month COBRA continuation period, and the costs involved in expanding coverage. The provisions of K.S.A. 1988 Supp. 12-5040 were developed from the option recommending adoption of legislation expanding access to coverage for those KPERS retirants who were otherwise not permitted to continue coverage in the group health care benefits plan beyond the 18-month COBRA continuation period.

It was clearly the intent of legislature in adopting K.S.A. 1988 Supp. 12-5040 to provide for expansion of coverage under group health care benefits plans to KPERS retirants beyond the 18-month COBRA continuation plan.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Richard D. Smith  
Assistant Attorney General

RTS:JLM:RDS:jm