

CLIENT NEWS BRIEF

Attorney General Confirms Board or Council Member Health Care Benefits cannot be more Generous than Employee Benefits

The California Attorney General, in a recent opinion, has concluded that members of legislative bodies may not receive health and welfare benefits not widely offered to the agencies' employees and officers *and* that mistakes made in determining benefit plans offered to legislative body members can yield serious consequences.

Background

The City of Moreno Valley (City) provided its City Council members with benefit contributions at a flat rate plus a percentage of the average of the salaries of selected City managerial employees, whose salaries were higher than that of the City Council members themselves. The benefit plans that the City made available to other City employees and officers did not provide the same level of benefits. Instead, the other plans provided contributions at the flat rate alone, or the flat rate plus a percentage of the employee's or officer's own salary.

Government Code sections 53200-53210 allow public agencies to extend health and welfare benefits with certain limitations. Specifically, benefits given to legislators cannot be greater than those received by non-safety employees and, in cases with a different benefit structure, the legislative body cannot receive above the most generous schedule of benefits.

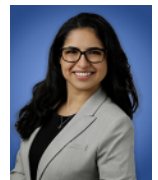
The Attorney General told the City that the benefits received by the City Council members were not legal within the limits of the law. While violations of the Government Code may lead to criminal charges, the standard for criminal liability here is criminal negligence, which requires more than an unintentional violation. An official would not necessarily be liable if they believed that their actions were lawful, so long as that belief is not objectively unreasonable. In this case, the plan structure was vetted by the City attorney and presented to the City Council by the City Manager.

Finally the City inquired into how they might remedy the loss of public funds spent on the plan over the years. The Attorney General confirmed the recipients of the unlawful benefits would be liable to the City for repayment, and the City could bring a civil action for such recovery. The Attorney General offered several causes of action which could form the basis of a recovery claim, including fiscal waste, conflict of interest code remedies, or breach of fiduciary duty claims to be brought against the City Council members who authorized this expenditure. Interest would be available based on a judgment outcome. The City was advised it may also enter into a repayment contract with the prior or current Council members. Such a contract is proper so long as requirements under Government Code section 1090 are followed; financial interests must be disclosed in both the contract and the official record along with affected members abstaining from participating in the vote. The Attorney General points out that the threshold question is whether the expenditure is a gift of public funds. The City, in evaluating the terms of any repayment agreement, would need to be careful in deciding to waive any amount as it may be an unconstitutional gift of funds.

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Regina A. Garza
Partner
Fresno Office
rgarza@lozanosmith.com



Jessica A. Mejorado
Associate
Fresno Office
jmejorado@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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Takeaways

This Attorney General opinion is a good reminder to exercise caution in dealing with public funds. If you have any questions about the applicable Government Code sections when considering health and welfare benefit plans, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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