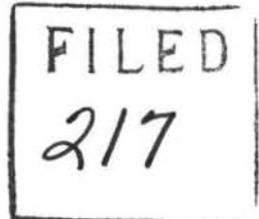


November 5, 1975

OPINION LETTER NO. 217
Answer by Letter - Klaffenbach

Honorable Irene E. Treppler
State Representative, District 106
4681 Fuchs Road
St. Louis, Missouri 63128



Dear Representative Treppler:

This letter is in response to your question which we understand has been amended to state as follows:

"In view of the provisions of Art. 6, Sections 23 and 25 of the Missouri Constitution for 1945 and the Statutory provisions to be found in Chapter 321 of the Revised Statutes of Missouri, can a Board of Directors of a Fire Protection District which has been incorporated pursuant to the Chapter 321 of the Revised Statutes of Missouri legally spend public funds for the following purposes:

"(1) To provide at public costs Health and Accident Insurance for its paid employees who may become ill or injured while on the job.

"(2) To provide at public costs Health and Accident Insurance for its paid employees who may become ill or injured while off the job.

"(3) To provide at public cost Health and Accident Insurance for the family of the living employees.

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"These insurance benefits being furnished as a part of the employees' compensation from the district."

The sections of the Constitution to which you refer, Sections 23 and 25 of Article VI, prohibit grants of money by political corporations or subdivisions to private corporations or individuals with certain specified exceptions. The pertinent exception is found in Section 25 of Article VI, which provides that:

". . . except that the general assembly may authorize any county, city or other political corporation or subdivision to provide for the retirement or pensioning of its officers and employees . . ."

The powers of the fire protection district are found in Section 321.600, RSMo 1969. While the contention has been made that Section 321.220, RSMo 1969 is the applicable section, this office has already previously reached the conclusion that Section 321.600 is applicable to fire protection districts in first class counties. We have enclosed Opinion No. 511, dated October 6, 1970, to Cantrell, which reached this conclusion.

With respect to your first question asking whether the fire protection district can provide at public cost health and accident insurance for its paid employees who may become ill or injured while on the job, it is our view that this authority is, with certain limitations, given to the fire protection district under the provisions of Section 321.600(15), subject to approval by the voters.

The pertinent portion of that section states:

"To provide for the pensioning of the salaried members of its organized fire department of the district and to provide for the payment of death benefits to the widows and minor children of members of its organized fire department, or if such member is unmarried or without minor children, to his next of kin, including adult children, if any, or other person designated by him or his estate, who lose their lives while on duty; and to provide for the payment of health, accident or disability benefits to such salaried members of its organized fire department, who shall become

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disabled due to injury or disease incurred while on duty or in the performance of their duties; . . ."

As we indicated, however, the authority thus granted is subject to the approval of the voters as further expressly provided in subsection 15.

Therefore, since the legislature has expressly provided, subject to voter approval, for the payment of certain health, accident or disability benefits to such salaried employees while on duty, the subsection authorizes the furnishing of health, accident or disability benefits to salaried members who become disabled due to injury or disease incurred while on duty.

Your second question asks whether such benefits may be provided for paid employees who may become ill or injured while off the job. We believe that the legislature having expressly provided that such benefits are payable only for disease or injury on the job excluded the authority to provide for similar benefits off the job. Therefore, we reach the conclusion that there is no authority to pay for such benefits which occur off the job.

You have also asked whether constitutional provisions, Sections 23 and 25 of Article VI, prohibit such benefits. There is authority that the public purpose doctrine would support laws providing job related benefits to employees. See Hickey v. Board of Education of City of St. Louis, 256 S.W.2d 775 (Mo. 1953); State ex rel. Cleaveland v. Bond, 518 S.W.2d 649 (Mo. 1975).

Since there are distinct legal principles which could support the constitutionality of the authorization to furnish health and accident insurance as contained in subsection 15, we do not believe that we are in a position to challenge the constitutionality of such section. It is a well-settled principle of constitutional construction that only when there is a clear conflict between a legislative enactment and the Constitution are the courts warranted in declaring the law to be void. In the Matter of Burris, 66 Mo. 442, 450 (1877); Borden Company v. Thomason, 353 S.W.2d 735, 743 (Mo.Banc 1962).

In answer to your question asking whether health and accident insurance benefits can be provided for employees who become ill or injured while off the job as part of the employees' compensation, we have answered that such benefits are not specifically authorized by the statutes. We previously reached the conclusion in our Opinion No. 93, dated September 9, 1969 to Cason, that insurance may be provided to employees of certain political

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subdivisions as a part of their compensation even in the absence of a statute expressly authorizing insurance. However, in this case it is clear that the fire protection district is limited by the express provisions of Section 321.600 to the furnishing of certain benefits after approval by the voters only to those employees who become disabled due to injury or disease while on duty and thus the legislature has, in our view, impliedly prohibited the furnishing of such insurance as a part of employees' compensation.

Your third question asks whether the fire protection district has authority to provide at public costs health and accident insurance for the families of living employees. We believe that this question has been answered by the Missouri Supreme Court in State ex rel. Sanders v. Cervantes, 480 S.W.2d 888 (Mo.Banc 1972). In that case the court held unconstitutional a statute which provided for insurance coverage for dependents of living officers and employees on active duty with the St. Louis police force.

In such case the court stated, l.c. 92:

"In apparent anticipation of our being compelled to so hold, relators submit that expenditures providing direct insurance benefits to wives and children of a living officer or employee could be construed as coming within the connotation of the word 'compensation' legally payable to said officers or employees. It is argued that such coverage is a form of compensation for the reason it shifts '. . . to public municipal funds the burden of the loss occasioned to the officer by death or sickness of his dependents . . .' and, '. . . the relief afforded by such coverage inures primarily to the officer or employee. . . .' Without evaluating the benefit an officer or employee might thereby receive, it is apparent that such an argument would also allow for removing other obligations of the (husband--parent) officer or employee, i.e., the obligation also to provide food, clothing and shelter to his or her dependents. Additionally, we do not doubt the difficulty, expressed by relators, that it must compete for personnel with private business that generally provides such 'fringe benefits.' Recognition of this fact, however, does not

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overshadow the basic truth that relators, the city, the general assembly and this court must resolve all such difficulties in compliance with the dictates of the citizens of this state as expressed in their constitution."

We therefore conclude that the providing of health and accident insurance for the family of living employees cannot be supported on the basis of compensation since this point has already been ruled upon in Sanders v. Cervantes, supra.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 511
10/6/70, Cantrell