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OPINION	:	No. 79-913
	:	
of	:	<u>October 26, 1979</u>
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SUBJECT: HEALTH BENEFITS FOR FORMER BOARD OF TRUSTEES MEMBERS—School districts that do not provide a pension plan for members of the Board of Trustees may not provide health and welfare benefits to former members of the Board of Trustees.

The Honorable Russell M. Koch, County Counsel of Merced County, requests an opinion on a question that we have phrased as follows:

If a school district does not provide a pension plan for members of its Board of Trustees, may it nevertheless provide health and welfare benefits to former members of its Board of Trustees, pursuant to Government Code section 53201?

CONCLUSION

A school district that does not provide a pension plan for members of its Board of Trustees may not provide health and welfare benefits to former members of its Board of Trustees pursuant to Government Code section 53201, which permits health and welfare benefits to be provided only to former members who are “retired,” i.e., former members who have qualified for a pension as a result of service to the school district.

ANALYSIS

Government Code¹ sections 53200–53210 authorize the legislative body of a local agency, which includes a school district, to provide health and welfare benefits for the benefit of its officers and employees. Specifically, section 53201 provides: that:

“The legislative body of a local agency, subject to such conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues or other charges from their compensation, to the extent that such charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by Government Code Section 53205.”

The phrase “retired members of the legislative body” was added to section 53201 in 1979. (AB 1742; Stats. 1979, ch. 415.)

Section 53208 provides that:

“Notwithstanding any statutory limitation upon compensation or statutory restriction relating to interest in contracts entered into by any local agency, any member of a legislative body may participate in any plan of health and welfare benefits permitted by this article.”

In his request for our opinion, the County Counsel states that:

“[I]n our county, school board members do not pay into a retirement system and therefore do not retire . . . it is our opinion that ‘retired board members of the legislative body’ do not include former school board members no longer serving as officers and [who) have not retired as no retirement system exists for school board members . . . [such] ex-board members are no longer serving in their official capacities for various reasons, such as: failure to seek re-election, defeated in an election, left office at their own volition, resigned, etc.”

Thus, the issue to be resolved is a narrow one: the meaning of the term “retired” in section 53201 in the context of the eligibility for health and welfare benefits of former members of a school board who are not eligible for a pension from the school district. Are

¹ All unidentified section references are to the Government Code.

such individuals “retired” within the meaning of section 53201?

We note the semantical problem that arises from the use of the term “retired” since it is a term that generally describes many different classes of individuals. The word “retire” and the concept of a “pension” are not intractably intertwined. (See generally *Eichelberger v. City of Berkeley* (1956) 46 Cal. 2d 182, 184–189.) Unfortunately, the term “retired” is not expressly defined. However, section 53200, subdivision (e) provides that:

“‘Employees’ or ‘officers and employees’ mean all employees and officers, including members of the legislative body, who are eligible under the terms of any plan of health and welfare benefits adopted by a local agency pursuant to this article.”

We think that what the Legislature is authorizing by sections 53200 *et seq.* is simply additional compensation in a form commonly denominated as “fringe” benefits—in this case, health and welfare benefits as specified in the statutes. We see no reason to ascribe to the Legislature an intent to provide such additional compensation to persons who are simply “former” members or “former” employees. Thus, in our view the legislative intent with respect to former members who are “retired” is to provide them with compensation—fringe—benefits—in addition to that which they are otherwise entitled to by virtue of a retirement plan, i.e., a pension.

Thus, we conclude that section 53201 is intended to authorize the use of public funds to provide additional compensation only to one classification of former employee and former officer—an employee or officer who has achieved a pension status pursuant to a retirement “plan” that was part of a contract of prior employment or was otherwise authorized by law during such period of employment or service. The term “retired” does not refer to persons who simply claim prior employment or prior service only. Thus, we do not reach the issue of whether section 53201 is intended to apply in such a way that it may violate the constitutional prohibition against the grant of extra “compensation” (Cal. Const., art. IV, § 17; art. XI, § 10(a)) or the prohibition against the gift of public funds. (Cal. Const., art. XVI, § 6.)

In summary, we conclude that a school district that does not provide a pension plan for members of its Board of Trustees may not provide health and welfare benefits to former members of its Board of Trustees pursuant to section 53201, which permits health and welfare benefits to be provided only to former members who are “retired,” i.e., former members who have qualified for a pension as a result of service to the school district.
