

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 84-505
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of	:	<u>DECEMBER 4, 1984</u>
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THE HONORABLE FLOYD R. B. VIAU, COUNTY COUNSEL,  
COUNTY OF FRESNO, has requested an opinion on the following question:

May a school district presently providing health and life insurance benefits to present and eligible former board members discontinue such benefits (a) during current terms of board members; (b) as to former board members who had already qualified for lifetime benefits; (c) upon the commencement of new terms of current board members; (d) as to future new board members?

CONCLUSION

A school district presently providing health and life insurance benefits to present and eligible former board members may not, in the absence of constitutional justification, discontinue such benefits (a) during the current terms of board members or (b) as to former board members who had already qualified for lifetime benefits, but may

discontinue such benefits (c) upon the commencement of new terms of current board members or (d) as to future new board members.

## ANALYSIS

Government Code section 53201 provides as follows:

"(a) 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.

"(b) The legislative body of a local agency may also provide for the continuation of any health and welfare benefits for the benefit of former elective members of the legislative body who serve in office after January 1, 1981, and whose total service at the time of termination of service is not less than 12 years."

The present inquiry is whether the governing board<sup>1</sup> of a school district<sup>2</sup> providing benefits<sup>3</sup> for its board members<sup>4</sup> may discontinue such benefits under various specified circumstances. It is long established that the terms and conditions relating to public employment are controlled by statute or ordinance rather than by ordinary contract standards. (*Markman v. County of Los Angeles* (1973) 35 Cal.App.3d 132, 134-135.) Thus, it has been held that no one has a vested right in public employment except insofar as the right is conferred by statute or other valid regulation; that public employees have no vested right in any particular measure of compensation or benefits, and that these may be modified or reduced by the proper statutory authority. (*Butterworth v. Boyd* (1938) 12 Cal.2d 140, 150; and see 65 Ops.Cal.Atty.Gen. 475, 480 (1982); 64 Ops.Cal.Atty.Gen. 526, 531 n. 8 (1981); and cf. *Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 641.)

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<sup>1</sup> "Legislative body" includes the governing board of a school district. (Gov. Code, § 53200, subd. (c).)

<sup>2</sup> "Local agency" includes a school district. (Gov. Code, § 53200, subd. (a).)

<sup>3</sup> "Health and welfare benefit" includes, inter alia, health and life insurance benefits. (Gov. Code, § 53200, subd. (d).)

<sup>4</sup> "Officers and employees" includes eligible members of a legislative body. (Gov. Code, § 53200, subd. (e).)

We are here concerned, however, with the right to continued benefits<sup>5</sup> by persons who have served, are serving, or will serve a term of public office. It has been observed that public employment does give rise to certain obligations which are protected by the contract clauses of the state (art. I, § 9) and federal (art. I, § 10) constitutions,<sup>6</sup> including the right to the payment of salary which has been earned. (*Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 852-853; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 308-309.)<sup>7</sup> By way of example, an employee begins earning pension rights, subject to the condition that the employee continue to serve for the period required by statute, from the first day of employment. (*Kern v. City of Long Beach, supra*, at 855; and cf. *In re Marriage of Brown* (1975) 15 Cal.3d 838, 846-847; *Waite v. Waite* (1972) 6 Cal.3d 461, 472-473.) This principle extends as well to other aspects of employment, such as those related to the practice of granting annual wage increases (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 248), the application of rules and regulations adopted by the board of education (*Frates v. Burnett* (1970) 9 Cal.App.3d 63, 69), the adoption of a five-step classification and pay plan (*Ivens v. Simon* (1963) 212 Cal.App.2d 177, 182), and the provisions for a hearing in a departmental manual (*Healdsburg Police Officers Assn. v. City of Healdsburg* (1976) 57 Cal.App.3d 444, 451). (See generally *California League of City Employee Associations v. Palos Verdes Library Dist.* (1978) 87 Cal.App.3d 135, 139.)

In *California League*, last cited, a public library district was required to reinstate three long-standing fringe benefits which it had purported to eliminate by resolution: a longevity salary increase awarded at the end of the ninth, twelfth, fifteenth, and eighteenth years of service; a fifth week of vacation after 10 years of service; and a four month paid sabbatical at the end of each six years of service. The court concluded that these benefits, provided pursuant to an official declaration of policy, constituted a

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<sup>5</sup> We have not been apprised of the specifications, limitations, and conditions of the subject benefits which may have been initially established by the district. (See Gov. Code, § 53201, subd. (a), *supra*.) This analysis concerns such benefits as so limited and subject to such conditions as may have been prescribed at the outset. Nothing herein is intended to suggest that such benefits may not be "discontinued" in accordance with original specifications of extent or duration.

<sup>6</sup> Issues respecting the impairment of contracts are frequently viewed in the related context of due process under the state (art. I, § 7(a)) and federal (14th Amend.) constitutions, as a deprivation of a vested property interest. (See, e.g., 66 Ops.Cal.Atty.Gen. 418, 421 (1983); cf. 66 Ops.Cal.Atty.Gen. 217, 224 (1983).) Our focus shall be on the contract clause.

<sup>7</sup> Where it is claimed that the state has impaired the obligation of its own contract, an initial inquiry arises concerning the ability of the state to enter into an agreement surrendering an essential attribute of its sovereignty. (Cf. *California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 510-512; *Valdes v. Cory* (1983) 139 Cal.App.3d 773, 789-791.) This reserved powers doctrine does not pertain, however, to a purely financial obligation. (66 Ops.Cal.Atty.Gen. 418, 423 (1983); 62 Ops.Cal.Atty.Gen. 589, 592-593 (1979).)

significant inducement to remain in service and were a form of deferred compensation for services satisfactorily performed. In *Olson v. Cory* (1980) 27 Cal.3d 532, a statute purporting to place a limit on cost-of-living increases previously provided for judicial salaries was held an unconstitutional impairment of vested contractual rights.<sup>8</sup>

We focus initially upon the discontinuance of health and life insurance benefits to current members of the governing board.<sup>9</sup> In *Olson*, last cited, it was held that a judge entering office is deemed to do so in consideration of—at least in part—salary benefits then offered by the state for that office; if salary benefits are diminished by the Legislature during a judge's term, the judge is nevertheless entitled to the contracted-for benefits during the remainder of such term. (*Id.*, at 539.) Similarly, in *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863, it was held that the elements of compensation (e.g., retirement benefits) for a public office (e.g., State Treasurer) become contractually vested upon acceptance of employment. (Cf. *Olson v. Cory*, *supra*, 27 Cal.3d at 538-539 n. 3.) Further, such contractual interests include not only those in effect upon commencement of employment, but also those conferred during the employee's tenure. (*Id.*, at 540; *Betts v. Board of Administration*, *supra*, at 866.) In our view, therefore, health and life insurance benefits provided pursuant to an official declaration of policy may not be discontinued during the current terms of board members.

We next consider the discontinuance of health and life insurance benefits to previously qualified former board members. This inquiry refers to those former elective members referred to in Government Code section 53201, subdivision (b), who had qualified for lifetime benefits by virtue of having served in office after January 1, 1981, and for a total minimum period of 12 years. Both the inquiry and the statute (providing for the "continuation" of benefits) presuppose that the policy providing for such benefits had

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<sup>8</sup> In *Olson*, last cited, four factors which would warrant impairment of a vested contract right were identified: (1) the action serves to protect basic interests of society, (2) the action is justified by an emergency and (3) is appropriate for the emergency, and (4) the action is designed as a temporary measure during which the vested contract rights are not lost but merely deferred. (*Id.*, at 539; *Home Building and Loan Assn. v. Blaisdell* (1934) 290 U.S. 398.) In applying these standards, the action's severity must be measured to determine the burden of justification. (*Olson v. Cory*, *supra*, 27 Cal.3d 532; *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234.) For purposes of this discussion no such purported impairment justification is presented or considered.

<sup>9</sup> Article III, section 4, of the California Constitution provides in part that "salaries of elected state officers may not be reduced during their term of office." (Cf. 60 Ops.Cal.Atty.Gen. 153, 154-156 (1977).) Members of a governing board of a school district are state officers (*People v. Darby* (1952) 114 Cal.App.2d 412, 423; *People v. Elliott* (1953) 115 Cal.App.2d 410, 415) and are generally elected (Ed. Code, §§ 5000, 35011; cf. Cal. Const., art. IX, § 16, subd. (a)). Whether or not such members fall within the purview of article III, we predicate our analysis and conclusions entirely upon the constitutional prohibitions against the impairment of the obligations of contract.

been in effect prior to the date of termination of a member's service; otherwise, the former member would have no vested right with respect thereto. (*Olson v. Cory*, *supra*, 27 Cal.3d at 542.)<sup>10</sup> Based on the fundamental premise that the elements of compensation conferred during the term of public office become contractually vested (*Betts v. Board of Administration*, *supra*, 21 Cal.3d at 863, 866), such benefits conferred for life, in the nature of deferred compensation and as inducement for continued service, pursuant to an official declaration of policy may not be discontinued.<sup>11</sup>

With respect to the discontinuance of health and life insurance benefits upon the commencement of a succeeding term following the discontinuance, it will be assumed in the absence of any suggestion to the contrary that such benefits had not been accompanied by an express promise of continuance through succeeding terms.<sup>12</sup> Hence, no issue arises with respect to any contractually vested interest in the continuation of benefits following the current term. In such a case, it is clear that a member who completes one term during which he was entitled to benefits and elects to enter a new term has impliedly agreed to be bound by those benefits only which are offered for the different term. (*Olson v. Cory*, *supra*, 27 Cal.3d at 540.) Similarly, a member entering office for the first time following the declaration of discontinuance, whether entering upon his own term or upon the unexpired term of a predecessor, may not claim such benefits. (*Id.*) Thus, it is possible that for a certain period some members (e.g., those serving the remainder of a current term) may be entitled to benefits while others (e.g., those entering upon a new term) might not. In this circumstance we perceive no constitutionally significant classification since the members of each class are not similarly situated. It has been held in connection with various categories of retirement and benefit plans that there is no requirement of uniform treatment, but only that there be a reasonable basis for each classification. (*Bilyeu v. State Employees' Ret. System* (1962) 58 Cal.2d 618, 623; 62 Ops.Cal.Atty.Gen. 106, 107 (1979).) The state is neither bound to extend a benefit to all classes which might possibly be reached (*McCourtney v. Cory* (1981) 123 Cal.App.3d 431, 442) nor required to continue indefinitely a non-vested benefit program (64 Ops.Cal.Atty.Gen. 837, 843 (1981)). Hence,

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<sup>10</sup> Indeed, an issue might arise concerning the validity of any such grant in view of the constitutional prohibition against the grant of extra compensation (Cal. Const., art. IV, § 17; art. XI, § 10(a); cf. 65 Ops.Cal.Atty.Gen. 66 (1982)) and against the gift of public funds (Cal. Const., art. XVI, § 6; cf. 67 Ops.Cal.Atty.Gen. 31 (1984)). (See 62 Ops.Cal.Atty.Gen. 631, 633 (1979).)

<sup>11</sup> It is not suggested and we do not suppose for purposes of this analysis that the proposed discontinuance be accompanied by comparable new advantages. (Cf. *California League of City Employee Associations v. Palos Verdes Library Dist.*, *supra*, 87 Cal.App.3d at 140; 60 Ops.Cal.Atty.Gen., *supra*, 159.)

<sup>12</sup> It is also conceivable, though not presented for consideration, that upon termination following a succeeding term, a member may have acquired the status of a previously qualified former member. (Gov. Code, § 53201, subd. (b), *supra*.)

there is no constitutional impediment to the discontinuance of health and life insurance benefits upon the commencement of a succeeding term or as to future new board members. (Cf. 60 Ops.Cal.Atty.Gen., *supra*, 158-159.)

It is concluded that a school district presently providing health and life insurance benefits to present and eligible former board members may not, in the absence of constitutional justification, discontinue such benefits during the current terms of board members or as to former board members who had already qualified for lifetime benefits, but may discontinue such benefits upon the commencement of new terms of current board members or as to future new board members.

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