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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 84-701
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of	:	<u>NOVEMBER 7, 1984</u>
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THE HONORABLE DAVID ROBERTI, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

May the Senate Rules Committee pay for health insurance coverage for Senate members?

CONCLUSION

The Senate Rules Committee currently may not pay for health insurance coverage for Senate members.

## ANALYSIS

Section 4 of article IV of the Constitution states in part:

"Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two thirds of the membership of each house concurring. Commencing with 1967, in any statute enacted making an adjustment of the annual compensation of a member of the Legislature the adjustment may not exceed an amount equal to 5 percent of each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted. Any adjustment in the compensation may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute."

The question presented for analysis is whether the Senate Rules Committee may pay for health insurance coverage for Senate members. Another way of phrasing the question is whether the above constitutional provision is applicable to health insurance coverage when it refers to the providing of "compensation" and "salary."

No current statute authorizes the state to pay for health insurance coverage for legislators, as it does for other officers and employees of the state. (See Gov. Code, §§ 9320, 19831, 22817, 22825-22829.)<sup>1</sup> Moreover, even if a statute did so provide with respect to legislators, it would be subject to the "5 percent" and "next regular session" limitations of the constitutional provision, unless the latter is inapplicable.

It is argued that the Constitution uses the terms "compensation" and "salary" in the restricted sense of payments made in cash.<sup>2</sup> The Legislature has differentiated between "salaries and wages" and "employee benefits" (including health insurance coverage) and has used the term "total compensation" (see §§ 18548-18548.1) when combining the two, which phrase the Constitution does not use. The Legislature has also defined both "compensation" and "salary" to mean *cash* payments:

"'Compensation' and 'salary' means the remuneration paid in cash out of funds controlled by the state, excluding mileage, reimbursement for

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<sup>1</sup> All section references hereafter are to the Government Code unless otherwise noted.

<sup>2</sup> Ordinarily "compensation" means "payment for value received or service rendered," and "salary" means "remuneration for services given." (Webster's New. Internat. Dict. (3d ed. 1966) pp. 463, 2003.)

expenses incurred in the performance of official duties, and any per diem allowance paid in lieu of such expenses." (§ 9350.6.)

These particular statutes thus support a restricted meaning for the terms "compensation" and "salary" as used in the Constitution.

However appealing this argument may first appear, we necessarily reject it upon reviewing various other legislative enactments, court decisions, and prior opinions of this office.

The starting point is section 8901 which prescribes the annual amount of compensation to be received by members of the Legislature. It states:

".....

"Commencing at noon on December 1, 1980, the annual compensation provided by this section shall be increased to twenty-eight thousand one hundred ten dollars (\$28,110).

"Commencing at noon on December 3, 1984, the annual compensation provided by this section shall be increased to thirty-three thousand seven hundred thirty-two dollars (\$33,732)."

Section 8901.5 authorizes a *deduction* from this compensation for the payment of "employee benefits":

"Each Member of the Legislature may elect to receive one or more employee benefits, as prescribed by concurrent resolution heretofore or hereafter adopted, in lieu of a portion of the compensation provided by Section 8901. The portion of the compensation allocated to the payment of the benefits shall be deemed to be 'compensation' for the purposes of Section 9350.6."

Section 8901.5 has been implemented by the Legislature through Concurrent Resolution, chapter 2, Statutes of 1981:

"WHEREAS, Section 8901.5 of the Government Code authorizes each Member of the Legislature to elect to receive one or more employee benefits, as prescribed by concurrent resolution, in lieu of a portion of his or her annual compensation; now, therefore, be it

*"Resolved* by the Assembly of the State of California, the Senate thereof concurring, That the employee benefits referred to in Section 8901.5 of the Government Code shall mean (1) the payment of the premium for any health or dental plan selected by the member and for which the state is authorized to pay all or a portion of the premium on behalf of any state employee, (2) the payment of the premium for any policy of accident insurance selected by the member for personal injury or sickness to the member, (3) the payment of the premium for a group term life insurance policy not to exceed fifty thousand dollars (\$50,000), as selected by the Rules Committee of each house, and (4) the payment of the cost of any other benefit which may be provided pursuant to federal and state law; and be it further

*"Resolved*, That the Rules Committee of each house provide for the manner and form by which a member may elect from month to month to have the above-described payments made in lieu of a portion of his or her monthly compensation."

Accordingly, the Senate Rules Committee currently administers a payroll deduction program whereby premiums for health insurance coverage are deducted from the monthly salary warrants received by the senators.

In conjunction with these statutes, section 22817 authorizes legislators to participate under the Public Employees' Medical and Hospital Care Act (§§ 22751-22856) which provides health benefits coverage to state officers and employees (see § 22754, subd. (b).). Section 22817 states:

"A Member of the Legislature may enroll in a health benefit plan. The contributions of such member shall be the total cost of his coverage and the coverage of any family members enrolled by him, exclusive of contributions to the State Employees' Contingency Reserve Fund.<sup>3</sup>

Having the legislators pay for their own health insurance coverage under section 22817 is in distinct contrast with the treatment provided other state officers and employees. The latter have their premiums for health insurance coverage paid by the state. (See §§ 22825-22828, 22841; see also § 19831.)

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<sup>3</sup> The State Employees' Contingency Reserve Fund is available "to defray increases in future rates, to reduce the contributions of employees and annuitants and the employers, or to increase the benefits provided . . . ." (§ 22840.)

Hence, an examination of the relevant statutes discloses a unique plan for legislators and a definition of "compensation" that expressly includes the payment of health insurance premiums for legislators (§ 8901.5).

Several judicial decisions and opinions of this office support the conclusion that legislators would be given "compensation" and "salary" if the state paid their health insurance premiums.

In *Martin v. City and County of San Francisco* (1959) 168 Cal.App.2d 570 the Court of Appeal ruled that premiums for health insurance coverage came within the term "rate of pay."

In 38 Ops.Cal.Atty.Gen. 116 (1961) we concluded that premiums paid by a county for health insurance coverage for its employees constituted "compensation."

In 39 Ops.Cal.Atty.Gen. 60 (1962) we relied upon the *Martin* case and our prior opinion in concluding that payment of health insurance premiums for legislators would constitute both "compensation" and "salary" for purposes of the predecessor to section 4 of article IV of the Constitution.

In 40 Ops.Cal.Atty.Gen. 62 (1962) we pointed to our prior 1962 opinion as the basis for the enactment of section 22817 authorizing legislators to pay for their own health insurance coverage.

Other cases that have held health insurance coverage to be part of "wages" include *Foremost Dairies v. Industrial Acc. Com.* (1965) 237 Cal.App.2d 560, 579-580 and *People v. Alves* (1957) 155 Cal.App.2d Supp. 870, 872. (See also *Ware v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1972) 24 Cal.App.3d 35, 44, affd. *sub. nom.*, *Merrill Lynch Pierce, Fenner & Smith v. Ware* (1973) 414 U.S. 117.)

We reaffirm the conclusions reached in our prior opinions that the payment of health insurance premiums is a form of compensation and salary paid to legislators. It is evident that the Legislature has also so construed the constitutional language at issue through the enactment of several statutes, particularly section 8901.5. This construction is consistent with the ordinary and natural meanings of the terms "compensation" and "salary" and is in keeping with several court decisions on the subject matter.

"A constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245.) "Constitutional provisions must be construed to give full force and effect to every portion thereof." (*Pugh v. City of*

*Sacramento* (1981) 119 Cal.App.3d 485, 489.) When a constitutional "provision is capable of more than one reasonable meaning, the construction placed thereon by the Legislature carries great weight. (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175.)" (*Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal.App.3d 221, 238.)

In sum the Constitution requires that the payment of health insurance premiums "be prescribed by statute" as well as be subject to "5 percent" and "next regular session" limitations. No current statute authorizes the state to pay such premiums. Indeed, current statutes expressly require that the premiums be paid by the legislators themselves.

In answer to the question presented, therefore, we conclude that the Senate Rules Committee may not currently pay for health insurance coverage for Senate members.

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