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March 5, 2013

ATTORNEY GENERAL OPINION NO. 2013- 6

John T. Bird, City Attorney
City of Hays
200 West 13th Street
P.O. Box 727
Hays, KS 67601-0727

Re: Cities and Municipalities—Retirement Systems—Group Health Care Benefits Plan; Availability for Retirants; Coverage, End; Eligibility; Cost of Coverage; Definitions

Synopsis: K.S.A. 12-5040 does not require a local government to make coverage under its group health care benefits plan available to former employees who left employment with the local government for reasons other than retirement. Cited herein: K.S.A. 12-5040.

* * *

Dear Mr. Bird:

As City Attorney for the City of Hays, Kansas, you ask for our opinion on whether the City is required to make coverage under its group health care benefits plan available to a former city employee who resigned employment with the City in 2003 but did not begin collecting retirement benefits under KPERS until September 2012. You are unaware of the former city employee's employment, or lack thereof, during this interim period. If it is our opinion that the City must provide coverage, you also ask what method a city may use to gather the information on the former employee's eligibility for coverage from another employer.

The applicable statute for local governments providing group health care benefits to their employees is K.S.A. 12-5040. It provides:

(a) Each local government which provides an employer-sponsored group health care benefits plan for the employees of the local government shall make coverage under such group health care benefits program available to retired former employees and their dependents, upon written application filed with the clerk or secretary thereof within 30 days following retirement of the employee, as provided by this section. Coverage under the employee group health care benefits plan may cease to be made available upon (1) the retired employee attaining age 65, (2) the retired employee failing to make required premium payments on a timely basis, or (3) the retired employee becoming covered or becoming eligible to be covered under a plan of another employer.

(b) Each such local government shall make such coverage available to all persons who were employed by the local government for not less than 10 years and who retired from such employment after December 31, 1988, and may make such coverage available to other retired employees and their dependents. Each such retired employee who elects to continue such coverage may be required to contribute to the employee group health benefits plan, including the administrative costs thereof, but such contribution shall not exceed 125% of the premium cost for other similarly situated employees. The local government may pay for all or part of the cost of continuing the employee group health care benefits plan coverage for such retired former employees and their dependents.

(c) As used in this section, "local government" means any county, city, township, special district, unified school district or any instrumentality of any one or several of such governmental entities; and "retired" means any employee who has terminated employment and is receiving a retirement or disability benefit for service with the local government from which they terminated employment.

At first glance, it appears K.S.A. 12-5040 is susceptible to different meanings. Under subsection (a), K.S.A. 12-5040 requires a local government to provide group health care benefits coverage to a "retired former employee" who worked for the local government for more than 10 years if it provided such coverage to its employees. Under subsection (c), the definition of "retired" could include persons who resign from employment and later elect to receive retirement benefits for service with the local government from which they terminated employment. Thus, the former employee described in your letter appears to qualify under subsections (a) and (c).

By contrast, subsection (b) of K.S.A. 12-5040 states that the local government is not required to make group health care benefits coverage available unless the employee was employed by the local government for at least 10 years *and* "retired from such employment." In other words, the phrase, "retired from such employment" modifies the first phrase, "employed by the local government." Thus, the reason that the employee leaves the employment with the local government is retirement. The former employee described

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in your letter appears not to qualify under section (b) because he resigned from his employment in 2003 for reasons other than retirement.

However, subsection (a) pertaining to coverage for "retired former employees" contains qualifying language, "as provided by this section." Thus, subsection (a), and thereby the definition of "retired" in subsection (c), must be read in conjunction with the limiting language regarding eligibility in subsection (b). In reading the provisions of K.S.A. 12-5040 together, a local government is only required to make group health coverage available to those retired former employees who worked for the local government for at least 10 years and retired from that employment. This interpretation is consistent with the rule of statutory construction known as *in pari materia*. That is, provisions relating to the same thing must be read together in an attempt to reconcile their differences and reach sensible and rational results.¹

Even if we found that the language in K.S.A. 12-5040 is ambiguous and resorted to legislative history to construe the statute,² we would conclude that it is the intent of the legislature to extend coverage only to employees whose retirement from the covered employer caused such employees to lose coverage.³

Having concluded that the City is not required to make coverage under its group health care benefits plan available to former employees who left employment with the local government for reasons other than retirement, we do not need to address your second question on what method a city is permitted to use to gather information on employee eligibility for coverage.

Sincerely,

Derek Schmidt
Attorney General

Athena E. Andaya
Deputy Attorney General

Janet L. Arndt
Assistant Attorney General

DS:AA:JLA:sb

¹ *Martindale v. Tenny*, 250 Kan. 621, 632 (2006).

² *In re K.M.H.*, 285 Kan. 53, 79, (2007). If statutory language or text is unclear or ambiguous, we apply canons of statutory construction or rely on legislative history to give effect to the legislature's intent.

³ See *Report on Kansas Legislative Interim Studies to the 1988 Legislature: Proposal No. 36—Retirants Health Care Benefits Plan (December, 1987)* and Attorney General Opinion Nos. 89-122, 94-31 and 2001-11.