

**COUNTY COMMISSIONER—COMPENSATION—HEALTH INSURANCE—
CONSTITUTIONALITY—County Commissioners’ Ability To Enact Midterm Increases To
Their Own Health Benefits, Convert Their Health Benefits To Cash Payments, Or Increase
Cash Payments They Receive In Lieu Of Health Benefits**

1. If a county’s health benefit plan is authorized by RCW 41.04.180, then RCW 41.04.190 provides that the county’s costs in that regard are not “additional compensation” to the employee that would otherwise implicate state constitutional prohibitions on county commissioners’ ability to increase their own compensation during their terms of office.
2. Increases to cash payments made in lieu of health plan contributions are constitutionally prohibited.
3. Midterm conversion of health benefits to equivalent value cash payments is likewise prohibited.

April 9, 2025

The Honorable Shawn Sant
Franklin County Prosecuting Attorney
1016 North 4th Avenue
Pasco, WA 99301

Cite As:
AGO 2025 No. 1

Dear Prosecutor Sant:

By letter previously acknowledged, you have requested our opinion on a series of questions relating to the validity of midterm changes to board of county commissioners’ health insurance benefits or cash payments in lieu of benefits. We paraphrase and address your request as follows:

1. **May county commissioners enact midterm increases to county contributions to their own health benefit plan?**
2. **May county commissioners enact midterm increases to cash payments payable to themselves where such payments are equivalent in monetary value to the cost of health benefits that the commissioners have opted out of receiving?**
3. **May an incumbent board of county commissioners enact a conversion of health benefits to equivalent value cash payments after winning the November election but before the new term of office begins?**

BRIEF ANSWERS

1. Possibly. Assuming that the health plan meets all requirements of RCW 41.04.180, then under RCW 41.04.190, the cost of the health plan to the county is not “additional compensation” to the employees that would be subject to a constitutional prohibition on midterm compensation increases.

2. No. Cash payments made in lieu of health plan contributions are compensation as that term is used in the state constitution, and the constitutional prohibition on midterm increases to compensation would apply.

3. No. To comply with the state constitution, a county commissioner’s compensation adjustments for the next term must be enacted prior to the election.

FACTUAL BACKGROUND

Your request sets forth an actual scenario involving Franklin County. The purpose of this opinion is to provide a legal analysis of the questions posed and not to resolve a specific controversy. Consequently, this opinion should not be construed as advice as to whether any specific action by Franklin County or its commissioners was lawful. While this opinion does not endeavor to resolve any particular controversy, we do use the facts you have provided to analyze your questions in context.

You represent that Franklin County “offers a health benefits plan that provides payment of a lump sum” to its employees, including county commissioners. “The lump sum is generally used for health insurance premiums or contributions to a Health Reimbursement Arrangement and Voluntary Employees’ Beneficiary Association (HRA and VEBA) account.” Franklin County offers its employees a variety of health insurance plans. *See Franklin County Benefits Bi-Monthly Rate Sheet: Sheriff’s Deputies* (Effective 1/1/2024), <https://www.franklincountywa.gov/DocumentCenter/View/3015/2024-Employer-Rate-Sheet---Deputies?bidId=> (last visited Feb. 3, 2025).

Separate from the health insurance plans mentioned above, HRAs “are employer-funded group health plans from which employees are reimbursed tax-free for qualified medical expenses up to a fixed dollar amount per year.” HealthCare.gov, Glossary, *Health Reimbursement Arrangement*, <https://www.healthcare.gov/glossary/health-reimbursement-account-hra/> (last visited Feb. 3, 2025). A VEBA is an association of employees organized for the purpose of providing certain benefits, including health benefits, to association members, and is tax-exempt under the United States Tax Code. *See IRS, Voluntary employees beneficiary association: 501(c)(9)*, <https://www.irs.gov/charities-non-profits/other-non-profits/voluntary-employees-beneficiary-association-501c9> (last visited Feb. 3, 2025); *see also* 26 U.S.C. § 501(c)(9). Here, we refer to the arrangement as the “HRA/VEBA,” because it both reimburses employees for medical expenses and is organized pursuant to 26 U.S.C. § 501(c)(9).

As we understand Franklin County’s program, the County permits employees to choose how to allocate the lump sum between insurance premiums paid on their behalf by the county and deposits into an HRA/VEBA account to reimburse the employee for qualified medical expenses. For example, one employee may choose a comparably expensive employer provided insurance plan that the lump sum does not entirely cover. In that case, the employee would have to pay out of pocket to make up the difference to pay the premium. Another employee may choose a comparably cheaper plan and have some money left over from the lump sum to deposit into an HRA/VEBA. A third employee may choose to opt out of employer provided insurance altogether (for example, if the employee has another source of health insurance). In that case, all of the lump sum would be deposited into an HRA/VEBA account. The lump sum is the same for each employee in the same compensation group. The amount that Franklin County allocates to these sorts of benefits is adjusted from time to time in response to increasing costs of health care, market pressures for recruiting and retaining employees, and other reasons. *See, e.g.*, Franklin County Resolution 2021-297 (setting health benefit contribution rates effective Feb. 1, 2022); *see also* Franklin County Resolution 2022-250 (setting health benefit contribution rates effective Jan. 1, 2023).

You inform us that Franklin County also provides another option for allocation of money that would otherwise go into an HRA/VEBA. You represent that employees in the same group “must decide as a group how to receive any county insurance contributions not applied to county offered insurance plans.” By this, and from Franklin County Resolution 2016-426 attached to your letter, we take you to mean that employees in the same group may elect, as a group, to receive taxable cash payments or contributions to a tax advantaged retirement account instead of depositing money left over from the lump sum into an HRA/VEBA. Your questions mostly stem from the desire of certain Franklin County employees to make such an election. You write that this process is somewhat complicated, because county commissioners are part of the same group as other county employees. As we discuss below, county commissioners are subject to certain constitutional restrictions on compensation increases that other county employees are not. Consequently, if the commissioners cannot receive increases, that may have consequences for other Franklin County employees.

ANALYSIS

1. Midterm increases in health benefits under RCW 41.04.180 are not additional compensation under RCW 41.04.190

You ask whether county commissioners may enact midterm increases to health benefit plan contributions made on their behalf. Because the cost of a county commissioner’s health care “policy or plan” is not “additional compensation” to the county commissioner under RCW 41.04.190 the answer is yes, so long as the health benefit plan is a “policy or plan” as those terms are used in the statute. However, we do not opine on whether any particular health benefit program, such as Franklin County’s, constitutes such a “policy or plan.”

There are three sections of the Washington Constitution regulating the compensation or salary of elected county officers: article II, section 25; article XI, section 8; and article XXX, section 1. Article II, section 25 forbids legislative bodies from granting “extra compensation to any public officer, agent, employee, servant, or contractor, after the services shall have been rendered[.]” Article II, section 25 further prohibits “the compensation of any public officer [from being] increased or diminished during his term of office.” Article XI, section 8 provides, in part, that “[t]he salary of any county, city, town, or municipal officers shall not be increased except as provided in section 1 of article XXX or diminished after his election, or during his term of office[.]” Article XXX, section 1 permits midterm increases in compensation for “municipal officers who do not fix their own compensation . . . to the end that such officers . . . shall each severally receive compensation for their services in accordance with the law in effect at the time the services are being rendered.” It further repealed other sections of the constitution, including article II, section 25, to the extent they are inconsistent.

Taken together, these constitutional provisions mean that public officers who have the power to fix their own compensation, and thus have the power to grant themselves an increase in compensation, may not constitutionally benefit from the exercise of this power during their current terms of office. This has been our office’s consistent opinion. *See* AGO 1992 No. 21; AGO 1983 No. 6; AGO 1968 No. 36.

County commissioners have the power to fix their own compensation. RCW 36.17.020. And your questions in particular have to do with acts by the Franklin County Board of Commissioners that will have the effect of increasing payments made to the commissioners’ HRA/VEBA accounts or to insurance premiums that benefit them. Accordingly, if the health benefit contribution increases constitute “compensation” as that term is used in the constitution, then such payments may not be increased midterm.

Payments made for health care policies and plans covering county commissioners are not compensation in some circumstances. RCW 41.04.190 provides that “[t]he cost of a policy or plan to a public agency or body is not additional compensation to the employees or elected officials covered thereby.” In addition to other elected officials not at issue here, it applies to “any county elected officials who are provided insurance coverage under RCW 41.04.180[.]” RCW 41.04.190. As we stated in AGO 1988 No. 27, it was the intent of the Legislature to permit midterm increases in health benefit policies or plans by way of RCW 41.04.190.¹

RCW 41.04.180 establishes a municipality’s authority to provide group hospitalization and medical aid policies or plans to county elected officers. Counties are authorized to “provide for all or a part of hospitalization and medical aid for its employees and their dependents” “through

¹ We noted in a prior opinion that there may be a separate question as to the Legislature’s authority to redefine what constitutes “compensation” subject to the constitutional prohibition on mid-term increases. *See, e.g.*, AGO 1988 No. 27, at 3-4. Nothing in this analysis should be interpreted as an opinion on that question. We have a longstanding policy to refrain from commenting on the constitutionality of statutes enacted by the Legislature. *See, e.g.*, AGO 1988 No. 27, at 3-4 (“In keeping with our long-standing policy, we will not directly address the constitutionality of the current version of RCW 41.04.190.”).

contracts with regularly constituted insurance carriers,” “health care service contractors,” or “self-insurers[.]” RCW 41.04.180. Counties are further authorized to “provide such hospitalization and medical aid to county elected officials and their dependents on the same basis as such hospitalization and medical aid is provided to other county employees and their dependents[.]” RCW 41.04.180.

Under these statutes, if a health benefit plan constitutes the sort of program authorized by RCW 41.04.180, then county commissioners may enact midterm increases to payments made to such a program on their behalf, as those payments would not constitute “additional compensation.” You have not asked whether Franklin County’s health benefits program meets the qualifications of RCW 41.04.180, nor have you given us enough information to make that determination, and we decline to render an unasked for and uninformed opinion.² If a health benefit program is not the sort of program authorized by RCW 41.04.180, and is consequently not a “policy or plan” under RCW 41.04.190, then midterm increases to it would be unconstitutional as to the county commissioners.

2. It would be unconstitutional for county commissioners to increase cash payments made in lieu of health benefits midterm

As just discussed, the state constitution bars county commissioners from increasing their own compensation midterm. While the cost to the employer of certain specified health benefits are, by statute, not “compensation,” cash payments made in lieu of health benefits do not fall within the meaning of “[t]he cost of a policy or plan[.]” See RCW 41.04.190. Therefore, it would be unconstitutional for county commissioners to enact midterm increases to cash payments they receive in lieu of health benefits.

Constitutional provisions should be interpreted according to the accepted or ordinary meaning of the words used at the time they were adopted. *State v. Brunn*, 22 Wn.2d 120, 139, 154 P.2d 826 (1945). The ordinary meaning of “compensation” is remuneration in whatever form it may be given, whether it be salaries, wages, or benefits. *State ex rel. Funke v. Bd. of Comm’rs*, 48 Wash. 461, 465-66, 93 P. 920 (1908) (“The term ‘compensation,’ as used, seems to be broad enough to include any kind of remuneration from the public treasury for a public officer, whether by way of what is called ‘salary’ or otherwise.”); AGO 1996 No. 2, at 8 (defining salary, in part, as “payments that are measurable as direct and immediate economic gain to the [officer] for services”). The ordinary meaning of compensation would thus clearly include cash payments like those you describe, unless RCW 41.04.190 removes these payments from being considered compensation.

² We note that language permitting employees to participate in a program allowing for reimbursement of medical expenses, included in certain authorizations for state employees, is missing from RCW 41.04.180. Compare RCW 41.04.180 (referring to “hospitalization and medical aid . . . through contracts with . . . insurance carriers or with health care service contractors . . . or self-insurers”) with RCW 41.04.340(7) (“a benefit plan that provides for reimbursement for medical expenses”) and RCW 28B.50.553(5) (same). Aside from observing that the language used in these statutes differs, we make no further conclusions regarding whether a program such as Franklin County’s is permitted by RCW 41.04.180 or other statutory authority.

We conclude that RCW 41.04.190 does not exclude cash payments like those you describe from being considered compensation. RCW 41.04.190 specifies that the cost of specified health care benefits “is not additional compensation to the employees or elected officials *covered thereby*.” (Emphasis added.) It is only by *opting out* of the county-offered insurance plans and the county-offered HRA/VEBA that the Franklin County employees become eligible for the cash payments. In other words, those payments are in lieu of health benefits; they are explicitly *not* for health benefits. Such cash payments are clearly compensation as that term is used in the constitution, and increasing cash payments midterm would violate article XXX, section 1.

3. A conversion of payments made for health benefits into cash payments in lieu of health benefits is an increase in compensation and such increases must occur prior to the election

As set out in the preceding section, cash payments made in lieu of health benefits are compensation under the constitution. Because they are compensation, establishing them where they did not exist before or increasing them is a compensation increase. Therefore, increases may not occur midterm, including an increase made by establishing them where they did not exist before. Further, increases made after an election count as a midterm increase. The county commissioners may not change the benefit structure to allow cash payments in lieu of receipt of health benefits in the time between election and when the new term of office begins.

Permitting cash payments in lieu of health benefits where that option was not allowed before is an “increase” in compensation. *See State ex rel. Wyrick v. City of Ritzville*, 16 Wn.2d 36, 39, 132 P.2d 737 (1942) (holding that provision of a salary midterm where no compensation previously existed was a violation of the constitution); *see also State ex rel. Port of Seattle v. Wardall*, 107 Wash. 606, 613, 183 P. 67 (1919) (“[I]t is as much against the spirit and purpose of the Constitution to permit public officers to solicit a salary during their terms where none has been provided, as it is to solicit an increase of a provided salary, since the one is as much a violation of the public policy involved as is the other.”); AGO 1989 No. 5, at 4 (citing *Wyrick*, 16 Wn.2d at 39).

Further, when an officer who sets their own compensation is elected, the officer may receive only the salary in force at the time of their election; the constitution prohibits the officer from receiving increased compensation during the ensuing term of office. Const. art. XI, § 8 (“The salary of any county . . . officers shall not be increased except as provided in section 1 of article XXX or diminished *after his election*, or during his term of office[.]” (Emphasis added.)); *see also* AGO 1982 No. 16 (opining that amendment 57 did not change the restriction against changes in compensation occurring after an election but before the term of office begins); *State ex rel. Funke*, 48 Wash. at 465-66 (holding that an act providing for compensation to public utility commissioners was effective “for officers thereafter elected only”); *State ex rel. Jaspers v. West*, 13 Wn.2d 514, 519, 125 P.2d 694 (1942) (“A person who accepts a public office does so with the full knowledge of the statute providing the compensation.”).

ATTORNEY GENERAL OF WASHINGTON

The Honorable Shawn Sant

7

AGO 2025 No. 1

Therefore, for the same reason that midterm increases to cash payments made in lieu of health benefits violate the constitution, allowing the option for such cash payments after the election, but before the new term of office begins, also violates the constitution.

Finally, you ask whether other kinds of “fringe benefits,” such as a car allowance, amount to compensation. Aside from repeating the general rule mentioned above that “compensation” as used in the constitution means remuneration in whatever form it may be given, whether it be salaries, wages, or benefits (*see Funke*, 48 Wash. at 465-66), we decline to give an opinion on the application of that rule to a class of possible payment schemes. If you would like us to opine on the permissibility of a particular plan, you are free to write again indicating all of the facts material to your question.

We trust that the foregoing will be useful to you.



NICHOLAS W. BROWN
Attorney General

A handwritten signature in blue ink, which appears to read "Wm. McGinty". The signature is written in a cursive, flowing style.

WILLIAM MCGINTY
Deputy Solicitor General

lrv