



Maximum Compensation For Elected Officials and Agency Heads

INTRODUCTION

This white paper addresses the issue of what constitutes maximum compensation for elected officials and other agency heads. Certain elected positions created by statute have maximum salaries listed in their creating statutes, such as Sheriffs, Assessors, Judges, Clerks of Court and School Boards. Questions arise when compensation statutes do not address whether health or other insurance premiums provided to such officials must be added to the calculation of maximum compensation. This paper will examine some of these statutes and reference more recent Attorney General Opinions, which, on the whole, opine that these added benefits must be added to the calculation of maximum compensation.

Background

Under Louisiana law, there are several positions for which the maximum compensation has been set by statute. These include such positions as Sheriffs, Assessors, Clerks of Court, Judges and School Boards. A common question received by the LLA is, what constitutes maximum compensation? Should the insurance premiums and retirement contributions paid by the public entity on behalf of the officer or agency head be included in the calculation of maximum compensation?

The Attorney General (AG) has addressed the question in several instances, with differing fact patterns. In recent years, the AG has consistently determined that any compensation above the maximum (whether set by statute or by an entity's charter), absent a statutory exception, is not allowed. Therefore, we must first look to the language of the statute or charter setting the maximum compensation for the particular position to determine what maximum compensation includes, and whether there are any related exceptions allowing compensation over and above the maximum.

What is Compensation?

Black's Law Dictionary (11th ed. 2019) defines "**compensation**" as "**Remuneration and other benefits received in return for services rendered; esp., salary or wages.**" Black's further cites a treatise on employment contracts which provides the following: "**Compensation consists of wages and benefits in return for services. It is payment for work. If the work contracted for is not done, there is no obligation to pay. [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement.**" *Kurt H. Decker & H. Thomas Felix II, Drafting and Revising Employment Contracts* § 3.17, at 68 (1991).

This definition leaves no doubt that compensation includes everything an employee or officer receives to compensate him or her for their work, including related benefits such as premiums for insurance and contributions to retirement. We should note that we are not attempting to define taxable income and non-taxable income; that is a tax question outside the scope of the various compensation statutes discussed in this paper.

What is the Statutory Authority for Contributions to Pension and Medical Insurance Programs for Public Employees and Officers?

[Article VII, Section 14 of the 1974 Louisiana Constitution](#). Section 14(A) generally prohibits the loan, pledge and/or donation of public funds, credit and property to any person, association or corporation, public or private. However, constitutional exceptions to this prohibition are found in Section 14(B). Section 14(B)(2) authorizes the use of public funds for contributions to pension and insurance programs for public employees.

[R.S. 33:5151](#) permits municipalities and political subdivisions to pay all or a portion of the insurance premiums for its employees and elected officials. [R.S. 33:5151](#) provides as follows:

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A. Any municipality or political subdivision of the state may make contracts of insurance with any insurance company legally authorized to do business in this state insuring their employees and officials under policies of group insurance covering hospitalization, and retirement, for such employees and officials, and may agree to match the payments of the employees and officials for the premiums or charges for any such contracts payable out of the funds of such municipality or political subdivision, respectively.

B. Nothing in this Section or in R.S. 42:851 shall be construed to limit the contribution of a local governmental subdivision toward the payment of premiums for accident and health protection for its employees or their dependents, or both.

C. (1) For purposes of this Section, a district public defender and his employees **or attorney contractors* may participate in any group health insurance program that the parish governing authority offers to its employees and officials.**

(2) Any district public defender office that chooses to participate in the group health insurance program is responsible for the employer portion of the health insurance premium, unless paid for by the parish governing authority through a separate intergovernmental or cooperative endeavor agreement **or by contractual agreement with the attorney contractor.***

(3) The parish governing authority may in its discretion pay public defender employee premiums.

***Act 305 of the 2022 Regular Session (effective August 1, 2022).**

Note that the statute says “employees and officials”. This allows elected officials to be covered as well. The AG has also opined that this provision along with Article VII, §14(B)(2) includes retired employees as well. See [AG Op. No. 13-0094](#) Coverage must be under policies of group insurance; individual policies are not permitted (**AG Op. No. 05-0049, Cited in footnote to AG Op. No. 12-0072**). Further, a political subdivision may pay up to 100% of health insurance premiums for its employees ([AG Op. No. 10-0164](#)); however, the agreement or contract of insurance must be in place before the payments are authorized, and past payments may not be reimbursed. Also see [AG Op. No. 07-0005](#).

The Louisiana Constitution defines “political subdivision” as a “parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.” [La. Const. art. VI, § 44\(2\)](#). Therefore, a political subdivision may pay for health insurance premiums of its employees, up to 100%, provided that all provisions of [R.S. 33:5151](#) are satisfied.

These contributions by the employer to the employee or official are legal and encouraged, but a conflict arises where there is a maximum salary set by statute or charter.



Attorney General Opinions

In recent decades, the AG has consistently opined that benefits for elected officials that include payments on their behalf towards medical and other insurance premiums, or retirement and other investment contributions, are compensation. Where these officials have legal limits (whether in statute or in city/parish charters) on their maximum compensation, the AG has opined that the addition of such benefits to the maximum compensation of certain positions is illegal, absent legislation allowing it, and, in at least one opinion, tantamount to an Article VII, Section 14 donation. In the next section, we will look at particular officials, noting relevant AG opinions.

Assessors

Assessors' maximum compensation is set in [R.S. 47:1907](#). However, it is necessary to study the entire statute to determine the actual amount. The Assessor not only has his main salary provided for in R.S. 47:1907(A) based on the population of the parish, he or she is also given a personal expense allowance of ten percent of his or her salary, and an educational supplement of seven percent of his or her salary dependent on completion every five years of a professional certification program described in the statute.

In addition to the salary set in R.S. 47:1907(A), Assessors receive increases of ten thousand dollars in R.S. 47:1907(I), seven thousand dollars in R.S. 47:1907(J), and a four percent increase in each year between 2013 and 2016 in R.S. 47:1907(K). The statute makes clear that these three increases in I, J and K are in addition to the salary set in R.S. 47:1907. As such, these amounts appear to be statutorily added to the maximum compensation, rather than a part of it.

The AG has opined a few times regarding an Assessor's maximum salary. In **AG Op. No. 97-0025**, the AG made a general statement that if the Assessor was already drawing the maximum salary, the receipt of additional compensation (in this case, a travel allowance without adequate documentation of business expenses) would constitute a bonus or donation prohibited by Article VII, Section 14. This additional income, along with the salary authorized by statute, should not exceed the maximum established in R.S. 47:1907.

In **AG Op. No. 00-0193**, the AG was commenting on District Attorneys but made reference to Assessors:

Further, we see no prohibition for such a plan to involve matching contributions by the employer on behalf of an employee and/or an elected or appointed official, with one exception. It is axiomatic that, if the maximum salary and/or per diem of a public official or employee is fixed by statute, that salary and/or per diem constitutes the maximum that can be received by the official or employee, in the absence of legislation providing otherwise. See, for example, R.S. 47:1907(A)(3) relating to assessors.

[R.S. 47:1907\(A\)\(3\)](#) provides that despite the statutory limitation on the compensation of an assessor, the assessor may participate in an eligible deferred compensation retirement plan and receive any employer contributions established, so long as the assessor does not receive a contribution more favorable than the amount offered to employees of their office.

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[R.S. 47:1908\(F\)](#) for the Washington Parish Assessor and [R.S. 47:1925.9 -1925.13](#) for remaining parish assessors provides for an automobile expense allowance. R.S. 1925.13 was enacted by

City and Parish Court Judges

[R.S. 13:1874.1](#) provides for the maximum salary for city court judges. R.S. 13:1874.1(C) provides that the term “salary” means the total annual compensation paid directly or indirectly from all sources for services as judge.

The AG opines in **AG Op. No. 91-0472**, which involves a question of what fees a city court judge can receive, that if the judge has reached the maximum compensation allowed by [R.S. 13:1874.1](#), he or she can receive no more compensation because of the prohibition contained in section C thereof. Section C defines “salary” as total annual compensation paid directly or indirectly from all sources. In the event that the judges’ compensation does not exceed the limit set by [R.S. 13:1874.1](#), then he or she may receive additional compensation out of the civil case funds as allowed by R.S. 13:1875 until that limit is met. **AG Op. No. 91-0472**

Presumably this applies to parish court judges as well, as they have a similar compensation statute in [R.S. 13:2564.1](#).

[R.S. 13:1875](#) provides for the compensation of judges of specific city courts.

Clerks of Court

Some statutes have exceptions to the maximum compensation, such as the salary supplement for clerks of court. Clerks of district courts maximum compensation is set in R.S. 13:782. However, the Clerks' Supplemental Compensation Fund in R.S. 13:761 provides that “...**the proceeds from the fund shall be used solely and exclusively for salary supplements to clerks of court of all of the district courts and criminal district courts of this state, which shall be in addition to any compensation otherwise authorized by law and which shall not be considered or included in the calculation of maximum compensation or minimum monthly compensation set forth in R.S. 13:782,...**” Therefore this supplement would not be used in the calculation of the maximum compensation but would be in addition to the maximum compensation.

The AG confirms this in [AG Op. No. 05-0374](#):

As can be gleaned from the above, Section 782(J)(2)(b) unequivocally provides that the seven percent increase in compensation is to the Clerks' annual salary as set forth in Subsection (A) of said section. While the salary supplements provided for in Section 761(A) constitute an increase in compensation, it is in addition and/or supplemental to the annual base salary provided in Section 782(A). Section 761 clearly distinguishes it from compensation otherwise authorized by law and provides that the supplement shall not be considered or included in the calculation of the salary set forth in Section 782.

Parish Council

In [AG Op. No. 13-0136](#), Livingston Parish asked the AG whether the Parish was authorized to pay medical insurance premiums on policies for its council members, and if so, must the Parish adopt an ordinance authorizing the parish administration to pay these premiums. The Parish's home rule charter was silent on the matter.

The AG first cites La. Const. art. VII, § 14 which generally prohibits the loan, pledge and/or donation of public funds, credit and property to any person, association or corporation, public or private. The AG then notes the constitutional exceptions to this prohibition in Section 14(B) which provides, in pertinent part, the following:

Nothing in this Section shall prevent ... (2) contributions of public funds to pension and insurance programs for the benefit of public employees....

The AG then opined that, unless prohibited by the Parish Charter, the Constitution enables local governmental subdivisions, such as the Parish, to fund insurance programs for its officials. This constitutional authority has been implemented by the Louisiana Legislature in [R.S. 42:851](#) (State government) and [R.S. 33:5151](#) (political subdivisions).

The AG then stated in the Opinion that because the Parish is a political subdivision of the state, as long as all of the provisions of [R.S. 33:5151](#) are satisfied, it may pay for the medical insurance of its officials. The AG notes however, that Section 2.05(A) of the Parish Charter limited the compensation of council members to \$800 per month, a maximum amount inclusive of insurance.

The AG states that they have frequently concluded in their opinions that the payment of health insurance premiums constitutes a related benefit and/or "compensation." In **AG Op. No. 03-0127**, the AG stated that "**if an official's salary is set by ordinance, the ordinance *must be amended to include health insurance and any other benefits (emphasis added).***" Also see [AG Op. No. 13-0136](#). Further in **AG Op. No. 99-0185**, the AG stated that a village "**must adopt an ordinance fixing the compensation of the mayor and members of the Board, which would include the payment of health insurance premiums.**" [Emphasis added.] Also see [AG Op. No. 13-0136](#).

The AG opines then that since the governing law, (here the Charter) limits the compensation of council members to \$800 per month, including health insurance premiums and any other benefits, if the Parish is already paying the council members the maximum \$800 per month in compensation then the Charter would have to be amended to allow for the additional compensation. The AG's final opinion was that:

...the Parish is authorized by La. R.S. 33:5151(A) and the Charter to pay health insurance premiums for its council members. Nevertheless, the payment of these premiums constitutes "compensation" that must be included when determining whether the council members are being paid a rate that is higher than that authorized by the Charter.

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Another AG Opinion, **AG Op. No. 97-0142A**, discusses the provisions of [R.S. 33:1233](#) which provides the maximum compensation for police juries, but also provide two alternative methods of compensation.

Pursuant to the first method, police jurors can receive maximum compensation not to exceed fifty dollars per day, for no more than twelve meetings per month and for no more than a maximum of one hundred forty-four days in any one year. In the AG's opinion, this method of compensation limits the total amount of compensation (including both cash and non-cash compensation) that a police juror may receive. The AG stated that a police juror who is compensated on a per diem basis cannot receive paid or partially paid health insurance premiums if the value of the paid portion of the premiums, when combined with the per diem rate received, would cause the his or her compensation to exceed the maximum amount.

Pursuant to the second method, police jurors may be compensated on a salary basis, and can receive a maximum salary of one thousand two hundred dollars per month. The AG then stated that although this method clearly limits the amount of salary (i.e., cash compensation) police jurors may receive, the statute does not indicate that the compensation of a juror compensated on a salary basis must be limited to salary, nor does the statute indicate a maximum amount of total compensation (i.e., salary and non-cash compensation) a juror compensated on a salary basis may receive.

It was thus the AG's opinion that Police Jurors who are compensated on a salary basis, as opposed to a per diem basis, may receive paid or partially paid medical insurance premiums in addition to their salary. We found no other opinions which amend or contradict this opinion.

City Marshals

In [AG Op. No. 19-0037](#), the AG addresses the fixed salary of city marshals established in [R.S. 13:1883](#), and opines that the term "salary" and "compensation" as used in the statute are not synonymous. The AG states that the term "compensation" is a "broad term that includes salary as well as other benefits, such as medical benefits, life insurance, expense reimbursement, and retirement benefits." Therefore, the AG concludes that health insurance premium payments and contributions to a qualified retirement plan, while part of the marshal's overall "compensation," do not count toward the minimum salary established in [R.S. 13:1883](#) for the Marshal of the City of Minden.

This opinion recalls AG Op. No. 10-0120, which stated that the Bogalusa City Marshal's salary paid pursuant to [R.S. 13:1883](#) must be *inclusive* of any amounts paid toward health insurance premiums or other related benefits.

Gravity Drainage District

In [AG Op. No. 11-0186](#), the Consolidated Gravity Drainage District #1 of Tangipahoa Parish ("District"), requested an opinion regarding whether the District was authorized to pay medical insurance premiums on policies for its commissioners and whether the District may make an employer contribution to the commissioners' 457 Deferred Compensation Plans. Their specific concern was that the commissioners were being paid a monthly salary of \$500, which is the limit according to [R.S. 38:1794\(B\)\(3\)\(b\)\(i\)](#). This statute provides that:

(3) Notwithstanding any other provision of law to the contrary, the provisions of this Paragraph shall apply to the board of commissioners of Consolidated Gravity Drainage District No. 1 of Tangipahoa Parish:

(b)(i) Members of the board of commissioners of the district may receive compensation of not more than five hundred dollars per month, as determined by the board of commissioners, for performing the duties imposed upon a member by virtue of his appointment.

The Opinion follows the same analysis as [AG Op. No.13-0136](#), citing the same laws and AG opinions, and states that:

In keeping with these past opinions, it is the opinion of this office that the District is authorized by La. R.S. 33:5151 to pay insurance premiums for its commissioners but that the payment of these premiums constitutes “compensation” which must be included when determining whether the commissioners are being paid a rate which is higher than that authorized by statute.

The AG further opined that here was no prohibition for such a plan to involve matching contributions by the employer on behalf of an employee and/or an elected or appointed official, with one exception.

It is axiomatic that, if the maximum salary and/or per diem of a public official or employee is fixed by statute, that salary and/or per diem constitutes the maximum that can be received by the official or employee, in the absence of legislation providing otherwise.

The AG also opined that the District could elect to make an employer contribution to a commissioner's eligible IRC § 457 Plan; however, the amount contributed by the employer must be included when calculating the commissioner's compensation, which cannot exceed \$500 per month according to [R.S. 38:1794\(B\)\(3\)\(b\)\(i\)](#).

Conclusion

The steps to calculate the maximum compensation of any elected official or agency head are:

- Review the law, whether in statute or in the parish or city charter, to see if a maximum salary has been established for the position in question;
- Determine if the law allows additional supplements to the salary;
- If the statute provides that the salary supplement is in addition to the maximum salary, then the compensation may include both the salary and the supplement;

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- If no such language exists, then any additional compensation, such as insurance premiums or retirement contributions paid on behalf of the official, must be included in the calculation to reach the maximum compensation allowed;
- Without this language, any benefit or supplement paid to the official over and above the maximum compensation set in the law is not be allowed unless it is included in the calculation of maximum compensation.