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CITIES: Home Rule — Authority to grant employees sick leave.

SOCIAL SECURITY: Sick leave payments.

Home rule cities have authority to make specific payments to employees on account of sickness.

Wages are excluded from social security taxes where the employer establishes a plan or system of payments to employees unable to work because of sickness or accident, not where employees receive normal pay while on leave for illness.

Opinion No. 4847 October 30, 1974.

Mr. Stephen Van Note, Director
Bureau of Retirement Systems
Stevens T. Mason Building
Lansing, Michigan 48913

You have requested my opinion as to whether a home rule city has the authority to make specific payments to its employees "on account of sickness." Your request notes that the Social Security act, § 209(b), 64 Stat 493 (1950); 42 USCA 409(b), excludes from the term "wages" (and, hence, from social security taxes) any remuneration paid to, or on behalf of, an employee or his dependents "under a plan or system established by an employer . . . on account of . . . sickness or accident disability. . . ." The Social Security Act, § 209(d), *supra,* also excludes from "wages" any payment, whether under a plan or not, made on account of sickness or accident disability after the expiration of six months following the last month in which the employee worked.

As to home rule cities, Const 1963, art 7, § 22 provides:

> "Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section."

Const 1963, art 7, § 22 was a revision of a prior constitutional provision and reference may be made to the constitutional debates and the Address to the People to ascertain the meaning of the Constitution. *Burdick* v *Secretary of State,* 373 Mich 578; 130 NW2d 380 (1964). In their Address to the People, the Constitution's framers said that Const 1963, art 7, § 22,

> ". . . reflects Michigan's successful experience with home rule. The new language is a more positive statement of municipal powers, giving home rule cities and villages full power over their own property and

> government, subject to this constitution and law" 2 Official Record, Constitutional Convention 1961, p 3393

This statement was echoed in *Alco Universal Inc* v *Flint,* 386 Mich 359, 363; 192 NW2d 247, 249 (1971), where the Court said:

> "Michigan is a strong home-rule state. Our constitution recognizes basic local authority. Const 1963, art 7, § 22. Legislation grants liberal powers. . . . The dignity and power of a city commission cannot be lightly construed away."

It is readily apparent that, pursuant to Const 1963, art 7, § 22 and enabling legislation, home rule cities have broad discretion to manage their own affairs. Thus, home rule cities fix the compensation of their employees. *Kane* v *Flint* 342 Mich 74; 69 NW2d 156 (1955). In doing so, a city is not restricted to fixing only cash salaries, but may also provide supplementary benefits, such as, insurance, pensions and uniforms, to its employees. *Kane, supra;* cf, OAG, 1971-1972, No 4732, p 66 (December 29, 1971). Based on that authority, it would appear evident that a home rule city may provide payments "on account of sickness." Const 1963, art 7, § 22 does, however, subject home rule cities to the restrictions imposed by the Constitution and the general laws of this state. Thus, cities must comply with the statutes governing public employment relations. *Detroit Police Officers Association* v *Detroit,* 391 Mich 44; 214 NW2d 803 (1974).

A review of the Constitution and the laws of this state fails to reveal any restriction which forbids a home rule city from making payments "on account of sickness." In fact, the Court in *Sovia* v *Saginaw,* 332 Mich 373; 51 NW2d 910 (1952), recognized and gave effect to the city's sick leave policy, pursuant to which employees had, for each year of service, the right to take ten leave days with pay "on account of illness." Therefore, there can be no doubt that home rule cities may make payments to their employees "on account of sickness."

It must be emphasized that merely because a payment is made "on account of sickness" does not mean that such remuneration is exempt from social security taxes. Social Security Act, § 209(b), *supra,* excludes from "wages":

> "The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) *made . . . under a plan or system established by an employer* . . . for his employees . . . on account of . . . sickness or accident disability. . . ." (Emphasis added.)

As exemplified by *Sovia, supra,* public employers often provide that their employees be allowed a day, or days, of sick leave with pay based upon a specified period of service. The employees receive their normal pay while sick until their leave time is exhausted. The employees are paid for the leave time from the regular payroll account. However, such an arrangement does not constitute "a plan or system" for providing payments "on account of sickness." *Graves* v *Gardner,* 280 F Supp 666 (SD NY, 1968). Thus, such payments are "wages" for the purposes of the Social Security Act and are subject to social security taxes.

In conclusion, it is my opinion that home rule cities have the authority to make specific payments to their employees "on account of sickness."

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Attorney General.

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COUNTIES: Federal Revenue Sharing Funds.

COUNTIES: Credit of the State.

HOSPITALS: Financial assistance from counties.

Counties are constitutionally prohibited from making a grant to a private, nonprofit hospital.

Health care is a permissible expenditure of federal revenue sharing funds.

Opinion No. 4851 November 4, 1974.

Honorable Russell Hellman
House of Representatives
Lansing, Michigan

You have requested my opinion concerning the use of funds received by a county under the State and Local Fiscal Assistance Act, 86 Stat 919 (1972), 31 USC 1221 *et seq.*, the Federal Revenue Sharing Act. You relate that the Calumet Public Hospital, a private nonprofit corporation, is attempting to secure financial assistance to undertake expansion and remodeling programs. A question has arisen concerning the legality of the use of revenue sharing funds for this purpose. The hospital facility serves residents of the county. Thus, the question may be stated as follows:

> Does a county have the general power to allocate funds received under the State and Local Fiscal Assistance Act of 1972 to a private nonprofit hospital corporation serving the residents of the county?

Health care is a permissible expenditure under the Federal Treasury Department permanent guidelines applicable to entitlement funds for periods beginning January 1, 1973, Section 51.31 of the Treasury Regulation states:

> "(a) *In general.* Entitlement funds received by units of local government may be used only for priority expenditures. As used in this part, the term 'priority expenditures' means:
>
> (1) Ordinary and necessary maintenance and operating expenses for . . .
>
> (iv) Health. . . .
>
> (2) Ordinary and necessary capital expenditures authorized by law. No unit of local government may use entitlement funds for non-priority expenditures which are defined as any expenditures other than those included in paragraph (a)(1) and (2) of this section." 38 Fed Reg 9138 (1973).