

**What is “the stipend?”**

**These are the basic parameters. Seven (7) out of fifteen (15) eligible employees have opted to receive the stipend in lieu of Town funded Health Insurance coverage.**

Chairman  
Board of Finance  
415 Route 169  
Woodstock, CT 06281

Letter to the BOF from Town Attorney  
11-09-2015

Re: Town Health Insurance: Stipend Program

Dear Mr. Dougherty:

You have asked for our advice concerning the stipend the Town pays to employees who voluntarily choose to decline insurance coverage under the Town's healthcare plan. During this year's budgeting process the Board of Finance learned that full-time employees assigned to Town Hall, including four elected officials, are being offered incentives in the form of monetary "stipends" for declining insurance coverage under the health insurance plan offered by the town. The stipend program is a longstanding provision within the Town Hall employees' collective bargaining agreement.

As described, the stipend program is not intended to provide a funding source for employees to purchase their own private healthcare plans. I have been told that the purpose of the stipend program is to avoid the unnecessary cost of health insurance coverage for those employees who are already covered under their spouse's health insurance plan.

This year, seven (7) of fifteen (15) Town Hall employees who are eligible for health insurance coverage have declined this coverage and accepted the stipend. According to Town records provided to me by the First Selectman's office, the amount of the stipend is \$1,163 per month or \$13,956 per year. This amount is based on the premium cost of family coverage under the Town's healthcare plan through Aetna. The Board of Finance believes the value of the stipend is in excess of the cost of comparable insurance coverage for an employee. According to information provided by Town staff the Town's cost, comparable insurance coverage for a family is \$22,920 per year. address the legal aspects of the program.

For the stipend program, "Town Hall" employees are those (a) covered by the AFSCME collective bargaining agreement ("CBA") and (b) employees working in Town Hall in non-bargaining, full-time positions. The latter category includes paid non-bargaining elected positions. It does not include Highway Department employees covered under a separate labor agreement with the Teamsters Union, or employees of the Board of Education. It is a longstanding practice for the Town to offer non-bargaining unit employees in Town Hall the same benefits as those employees covered by the AFSCME contract.

Of the fifteen Town Hall employees eligible for healthcare benefits, six (6) are union members covered under the CBA collective bargaining agreement with AFSCME ("the CBA"). Three of bargaining unit employees have chosen to decline insurance coverage and therefore are receiving a stipend under section 15.2 of the CBA.

The specific stipend language of the CBA, in effect since 2013, is as follows:

**Does taking the stipend present a future liability for either the taxpayer (A) or the employee (B)?**

- A. NO. The taxpayer saves over \$7,000 each year every time an employee takes the stipend instead of insurance.**
- B. NO. There is no “liability” to an employee who is able to offset some of their spouse’s insurance contributions.**

To the Board of Finance for consideration,

Looking beyond the potential legal issue brought up here tonight, I feel there are three other reasons the Board of Finance should consider a recommendation to the Board of Selectmen that they address the three points outlined below and consider a course to modify the longstanding practice of paying a stipend in lieu of receiving the health insurance policy.

1) Inequity;

The stipend benefit was legally negotiated in good faith with the union members within the town hall. In most cases these are assistants to the department heads. For the most part they earn the same wage which is approximately \$41,400. The current year stipend monthly payment is \$1,163 or \$13,956 dollars annually. With that amount added to the employees' wages, it increases the total compensation from \$41,000 to \$55,356 dollars yearly. Because Social Security benefits are calculated based on the 35 highest grossing years of employment (*after indexing to account for changes in average wages since the earnings were received*). The last 20 years are usually a person's highest grossing years. Because of that, there is the potential that two employees, one taking the stipend and the other receiving the insurance who work in "like" jobs earning the same base salary could retire and one of them will receive significantly higher benefits for the rest of their life.

This presents a potential future liability's for the taxpayer and the employee.

2) Conflict of Interest,

The longstanding practice has been that the Non-union department heads receive the same benefits package as was negotiated with the union.

The conflict is, that non-union department heads may be taking part in the contract negotiations whereas they receive a significant monetary gain as a result of the contract.

3) Wasteful expenditure,

The stipend at \$13,956 dollars is an extremely generous compensation in lieu of receiving health insurance. I believe we have the responsibility to ask ourselves on behalf of the taxpayer, Is this a reasonable expenditure of taxpayer dollars in a town with limited resources?

***I do understand the town has a contract thru 2017 with the union. Unless it's somehow found invalid, the Town of Woodstock will be required to honor it. I am not with this letter in any way advocating for breaching the existing contract with the union members.***

David Fortin,  
Member Woodstock's Board of Finance.

2. *Is the language in the union (AFSCME) contract, as noted above, in violation of any regulations under ACA, ERISA, or any other federal or state department of labor regulations? If so, what steps should be taken to correct the situation? The contract does have a "savings clause" should any part of the contract be deemed invalid.*

**Response:** Section 15.2 of the CBA relates to the wages, hours and other conditions of employment. As such, it is a mandatory subject of collective bargaining under MERA. It provides a common bargained-for-benefit to employees who elect not to take the Town insurance coverage. The effect of the ACA Employer Mandate is discussed above. The Employee Retirement Security Act of 1974 ("ERISA") establishes minimum standards for pension plans and healthcare plans that are not self-funded. The Town's healthcare plan is currently purchased through Aetna Healthcare. As a traditional policy of health insurance Aetna Healthcare policy is subject to those sections of ERISA that pertain. According to the Town's healthcare consultant, the policy and the stipend program are fully compliant with ERISA. I recommend obtaining a written opinion to that effect from the consultant. In certain circumstances, stipends in lieu of healthcare coverage may be violative of certain provisions of ERISA, ACA and IRS Regulations if the stipend is intended to provide funding for an individual health care policy.

3. *Does the town have any legal obligation to provide a non-union "Town Hall" employee compensation for having declined insurance coverage?*

**Response:** Benefits derived from negotiated collective bargaining agreements are not legally required to be extended to employees in non-bargaining positions. But by longstanding custom and practice, however, the Town has extended the same benefits to non-bargaining unit employees as those defined in the AFSCME CBA.

4. *Since the incentive/stipend is considered FICA taxable and so impacts future Social Security benefits, are there any legal Social Security issues/implications that the town needs to be aware of?*

**Response:** No. I have been informed that the stipend is "after tax" compensation. As such, the stipend payments are considered ordinary income to the employee for the purpose of federal income tax and FICA. Under the Town's pension contracts, the stipend is not included in the definition of "salary" for purposes of pension benefit calculations.

5. *Since the stipend being paid is in excess of that stated in the labor agreement, are there other legal issues related to this overpayment that could present liabilities or other causes for concern for the town? For reference: the labor agreement calls for a stipend equal to one half the cost of the premium for "an employee" plus a monthly allocation of the HSA for a family plan; we are paying one half the costs for an employee plus spouse or family plus the monthly allocation for the HSA for a family plan which is considerably greater.*

**Response:** The determination of the amount of the stipend being paid under the language of Section 15.2 of the CBA should be reviewed by the Town Finance Department. I have

**Do non-union department heads take part  
in Union contract negotiations they may  
gain from?**

**Union contract negotiations are conducted by the Board of Selectmen and Union representatives, never by non-union department heads.**

**The First Selectman is charged with entering into contracts on behalf of the Town per State Statute.**

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To enable the Town to document that the above two recommendations are being enforced, the Town should continue to require proof of health care coverage for the employee through a health care plan offered by his or her spouse's employer.

I trust this responds to your inquiry.

Very truly yours,

Robert M. DeCrescenzo, Esq.  
Town Attorney

**BOF Meeting Minutes  
11-24-2015**

RMDe/psm

David Richardson as well as other members of the Board of Finance were disappointed that it had taken six months to receive a reply from the Town Attorney, and they felt that his answers raised more questions than answers.

David Richardson pointed out that under section 2 of the attorney's opinion letter the Town Attorney suggests getting a written opinion from the Towns Health Care consultant, as to whether the AFSCME contract is in violation of any regulations under ACA, ERISA, or other federal or state Department of Labor regulations. He would also like to get a written opinion on this issue from the Board of Education's Health Insurance consultant.

David Richardson feels that the Board of Selectmen and the Board of Education should meet to see if the Town's health insurance could be combined with the Board of Education's Health Insurance. He recently read in the Norwich Bulletin that the Town of Brooklyn has recently done so. It was the consensus of the Board of Finance that this option should be explored in Woodstock. Acting Superintendent Viktor Toth stated that he believed that there was a meeting scheduled sometime in December to discuss this issue, and he also feels that the school unions would not be opposed to this.

David Richardson would also like to get a firm dollar figure on how much the health insurance costs for an individual. He feels that stipend should be corrected to be ½ of the cost of an employee. He also pointed out that the people receiving the stipend do not have the weekly health insurance deduction taken out of their paychecks.

David Richardson also has concerns with item #6 in the attorney's response. He feels that he answered the question for union employees, but not the non-union employees. He feels that the attorney did not address the fairness issue of the Elected Officials and the Department Heads receiving the benefits that the union contract provides to union members.

Glen Lessig asked if a member of the Board of Finance had sat in on the Town Hall Employees union negotiations. The answer was no. However, David Richardson pointed out that the First Selectman negotiated on behalf of the Town, and felt that that was a conflict of interest for him to do so, since he received the same benefits that the union employees were bargaining for. It was pointed out by David Hosmer and Fred Chmura that the First Selectman is the authorized to conduct Town business, and that it would be awkward not to have the First Selectman in the negotiations. Jeff Kelleher thought perhaps that in the next negotiations that the First Selectman could designate another member of the Board of Selectmen to do the bargaining to avoid the appearance of a conflict.

**Sec. 7-474. Negotiations and agreements between municipality and employee representatives. Federal approval. Elective binding arbitration; procedure; apportionment of costs.** (a) Except as hereinafter provided, when an employee organization has been designated, in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit, the chief executive officer, whether elected or appointed, or his designated representative or representatives, shall represent the municipal employer in collective bargaining with such employee organization.

(b) Any agreement reached by the negotiators shall be reduced to writing. Except where the legislative body is the town meeting, a request for funds necessary to implement such written agreement and for approval of any provisions of the agreement which are in conflict with any charter, special act, ordinance, rule or regulation adopted by the municipal employer or its agents, such as a personnel board or civil service commission, or any general statute directly regulating the hours of work of policemen or firemen or any general statute providing for the method or manner of covering or removing employees from coverage under the Connecticut municipal employees' retirement system or under the Policemen and Firemen Survivors' Benefit Fund shall be submitted by the bargaining representative of the municipality within fourteen days of the date on which such agreement is reached to the legislative body which may approve or reject such request as a whole by a majority vote of those present and voting on the matter; but, if rejected, the matter shall be returned to the parties for further bargaining. Failure by the bargaining representative of the municipality to submit such request to the legislative body within such fourteen-day period shall be considered to be a prohibited practice committed by the municipal employer. Such request shall be considered approved if the legislative body fails to vote to approve or reject such request within thirty days of the end of the fourteen-day period for submission to said body. Where the legislative body is the town meeting, approval of the agreement by a majority of the selectmen shall make the agreement valid and binding upon the town and the board of finance shall appropriate or provide whatever funds are necessary to comply with such collective bargaining agreement.

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