



## Email Communication

September 2019

Dear Mayor,

You requested a legal opinion from MTAS that addresses whether individuals who work for the local Chamber of Commerce are legally eligible for benefits provided to employees of the city (hereinafter "City"). For the reasons set out below, I am of the opinion that the employees of the local Chamber of Commerce (hereinafter "Chamber") are not legally eligible to receive the benefits provided to the employees of the City.

According to the Tennessee Secretary of State's website, the Chamber is a nonprofit organization first incorporated in 1979. Based upon our conversation, it is my understanding that the Chamber employs at least 4 individuals and that none of those individuals work under the control of or report to any City official or employee. It is also my understanding that for the last several years, the City has annually appropriated \$40,000 to the Chamber with the remainder of the funding for the Chamber coming from the County and member dues. For several years, the City and Chamber have had an agreement, which you assert was verbal, whereby the City agreed to pay the Chamber's employees and the Chamber agreed to subsequently reimburse the Chamber for those payments. Additionally, according to the employment contracts for at least one Chamber employee, since the date of hire, the employee has been allowed to participate in the City's health insurance plan and the City has made contributions to the Tennessee Consolidated Retirement System (hereinafter "TCRS") on behalf of the employee. The relevant language from the employment contract reads, "Director will receive retirement benefits, insurance, and all other benefits stated in the City Rules and Regulations."

Despite the language from the contract, I am of the opinion that no legal authority exists that allows the employees of the Chamber to participate in the City's health insurance program or have contributions made by the City on their behalf into TCRS.

With regard to eligibility for the city's health insurance benefits, the City's personnel policy, which was originally adopted on June 9, 2009, and subsequently amended on September 23, 2009, and January 12, 2010, provides as follows:

**R. HEALTH INSURANCE ELIGIBILITY REQUIREMENTS-The following individuals are eligible for coverage under the Plan:**

1. Full time employees who have completed the 30-day waiting period and who are regularly scheduled to work at least 37.5 hours per week in the employ of the employer (herein called employees within the eligible classes); and
2. Dependents of eligible employees, provided such dependents meet the requirements listed under the Dependent Eligibility section of this Plan.

Based upon the language above, only certain employees of the City are eligible to participate in the City's health insurance program. The language included in at least one of the Chamber employee's employment contract makes clear that the employee works for and reports to the Chamber. As such and assuming that all of the employees have similar contracts, it is clear from the language in the contracts that the employees are not City employees and are therefore not eligible to participate in the City's health insurance plan.

Additionally, the relevant language in the Tennessee Code related to eligibility for participation in the Tennessee Consolidated Retirement System reads:



The chief legislative body of any political subdivision of the state, not participating under §§ 35-212 -- 8-35-214, may, by resolution legally adopted and approved by the chief legislative body, authorize all its employees in all of its departments or instrumentalities to become eligible to participate in the retirement system under the same terms and conditions, except as provided in subsection (e); ...

Tennessee Code Annotated § 8-35-201(a).

As discussed above, Chamber employees are not employees of the City and therefore are not eligible to participate in TCRS, pursuant to the above-referenced language. As such, no legal authorization exists for contributions to be made by City to TCRS on behalf of the Chamber employees.<sup>1</sup>

Finally, I reviewed all of the minutes from the meetings of the Board of Mayor and Aldermen (hereinafter "BOMA") for 2015. While there is mention of the current Chamber director being hired in the minutes, there is no mention of the BOMA reviewing, discussing, or voting upon the terms of the director's contract.

For the reasons set out above, I am of the opinion that no legal authority exists that allows the employees of the Chamber to participate in the City's health insurance program or have contributions made by the City on their behalf into TCRS.

Regards,

Elisha D. Hodge  
MTAS Legal Consultant

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<sup>1</sup> It is my understanding that City Officials have been in contact with staff at TCRS about this issue as well.