



**CITY OF NORTH CANTON**  
**MAYOR DAVID J. HELD**

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**-MEDIA RELEASE-**  
**FEBRUARY 27, 2014**  
**9:30 am**

**Releasing November 15, 2013 Legal Opinion:** Ending city-paid family health insurance benefits for family members of elected officials and further limiting benefits to individual primary coverage for elected officials.

The people of North Canton spoke clearly on the matter and I believe that the people of North Canton have a right to know the implications of the November 15, 2013 Legal Opinion on their vote in order to preserve the integrity of the election system.

I personally followed that decision and I encourage all elected officials to follow that decision. Furthermore, I am releasing the November 15, 2013 Legal Opinion on the matter because I believe that a transparent discussion will follow and allow the city to resolve the matter and move forward.

I do not believe that the ordinance approved by the voters of North Canton on November 6, 2012 should be challenged. I believe that we should adopt the ordinance by personal practice in this term and ratify it for future effective terms.

David J. Held  
Mayor of the City of North Canton, Ohio



**City of North Canton**  
**Timothy L. Fox**  
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November 15, 2013

**\*LEGAL OPINION: ATTORNEY-CLIENT PRIVILEGED INFORMATION\***  
**\*DO NOT DISCLOSE TO THIRD PARTIES\***

To: North Canton City Council/Mayor/Director of Finance

Re: 2012 Initiative to Limit Health Care Benefits for Part-Time Elected Officials

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**I. Issue Presented.**

Whether the initiative to limit North Canton's elected officials' health care benefits, passed on November 6, 2012, by a vote of 6,480 *for*, and 2,550 *against*, may lawfully limit the benefits of officials elected to serve for the 2014-2015 term of office.

**II. Controlling Law and Legal Analysis.**

The initiative does not affect the newly-elected officials' benefits for two reasons: 1) North Canton employs no "part-time" elected officials from whom to limit health care benefits; and 2) the initiative passed in contravention of North Canton's Charter ("Charter") and is therefore void.

**A. North Canton employs no “part-time” elected officials.**

The 2012 initiative purports to limit the health care benefits of “part-time” elected officials. (A copy of the proposed ordinance is attached hereto.) However, North Canton employs no “part-time” elected officials. It never has. North Canton’s elected officials are “salaried” employees, compensated at a flat rate, regardless of the number of hours worked during a particular pay period. Therefore, the initiative to limit part-time elected officials’ health care benefits should not affect the benefits of those officials elected to serve the 2014-2015 term of office as salaried employees.

**B. The initiative passed in derogation of the Charter and is therefore void.**

Begin the analysis with the premise that a municipal ordinance in conflict with its charter is ineffective. *Reed v. City of Youngstown*, 173 Ohio St. 265 (1962), paragraph two of the syllabus. Whether enacted by a legislative body, or through a voter initiative, such as here, an ordinance at odds with its charter is void at its inception and has no effect. *Id.*

North Canton’s Charter mandates that Council sets the salaries for elected officials. Section 4.04. Salaries and Bonds. Moreover, the Supreme Court of Ohio has consistently held that health care benefits shall be regarded as salary. *State ex rel. Parsons v. Ferguson*, 46 Ohio St.2d 389 (1976). Because the 2012 initiative purported to utilize an ordinance to limit the elected officials’ health care benefits (salary)—*a right belonging only to Council*—the voters passed the initiative in derogation of the Charter. As a result, the initiative ordinance is a nullity. *City of Cleveland v. Regional Transit Authority*, 8th Dist. Cuyahoga No. 40857, 1980 WL 354736, \*5 (July 3, 1980). Indeed, because the initiative was contrary to Section 4.04, it was not

properly submissible to the North Canton's electors. *State ex rel. Lautz v. Diefenbach*, 165 Ohio St. 495 (1956); *State ex rel. Werner v. Koontz*, 153 Ohio St. 325 (1950).

### **III. How to Resolve the Invalid Initiative?**

Not to overstate the obvious, but declaring the initiative void or ineffective for the reasons stated herein will have far-reaching implications. Council, however, has a number of options available to resolve the invalid initiative. First, if Council believes the initiative, despite its flaws and grossly deceptive wording, is the will of the voters, it may resolve the conflict by enacting a similar ordinance of its own. This ordinance would not go into effect until the 2016-2017 term of office, however, because the Charter's mid-term compensation provision prohibits it from applying to those elected to office on November 5, 2013. Note that this course of action may result in a lawsuit from the initiative's originator requesting that a judge determine the initiative's validity.

Council may also simply ignore the initiative's mandate, as has been done thus far, and its members may choose for themselves, individually, whether to accept or reject certain health care benefits. Should any members accept certain benefits in contravention of the initiative, the likelihood of a lawsuit from the initiative's originator would greatly increase, together with the criticism of certain residents, and perhaps the media.

In addition, and while untimely, Council could beat the initiator to the courthouse and request that a judge determine the initiative's validity, and if deemed valid, whether it applies to those elected to serve the 2014-2015 term of office. Although this course of action brings legal certainty to the table, it also brings the certainty of additional legal man-hours, expenses, and

undoubtedly the question of why the issue had not been resolved in time to place on notice those candidates running for the 2014-2015 term of office.

**IV. Conclusion.**

The 2012 initiative to limit health care benefits of North Canton's elected officials is not only ineffective for its stated purpose, but because the voters passed it in derogation of the Charter, it is void on its face. The manner in which Council remedies the issue, however, depends on if it believes the initiative is the will of the people, if its fatal flaw of filing as an ordinance instead of a charter amendment should cause it to collapse upon itself, or whether a judge should make each of those determinations. In all likelihood, however, Council should anticipate that if its decision is to ignore or limit the initiative that a lawsuit, and possibly an initiative for a "charter amendment" to limit the health care benefits of North Canton's "elected officials," will soon be on the horizon.

Respectfully,

  
Timothy L. Fox  
Director of Law

# INITIATIVE PETITION (Municipality or Home Rule Township)

Revised Code 504.14, 731.28-.41, 3501.38, 3503.06

**NOTE: Prior to circulation of an initiative petition proposing an ordinance or measure, a certified copy of such ordinance or measure must be filed with the City Auditor, Village clerk or Township Fiscal Officer (home rule township). This petition must be signed by ten percent of the number of electors in the city, village or unincorporated area of the township who voted for governor at the preceding gubernatorial election and must be filed with the City Auditor, Village Clerk or Township Fiscal Officer.**

(NOTE –The below notice must be printed in red.)

**NOTICE – Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.**

To the Director of Finance of the City of  
(City Auditor, Village Clerk or Township Fiscal Officer) (City, Village or Township)  
North Canton, Ohio:  
(Name of City, Village or Township)

We, the undersigned, electors of the City of North Canton, Ohio  
(City, Village or Township) (Name of City, Village or Township)

respectfully propose to the electors of such city, village, or township for their approval or rejection at the general election to be held on the 6th day of November, 2012 the following Ordinance:

The following is a full and correct copy of the title and text of the proposed Ordinance:

### **ENDING CITY-PAID FAMILY HEALTH INSURANCE BENEFITS RECEIVED BY FAMILY MEMBERS OF PART-TIME ELECTED OFFICIALS AND LIMITING CITY-PAID HEALTH INSURANCE BENEFITS FOR INDIVIDUAL PART-TIME ELECTED OFFICIALS**

An ordinance ending city-paid health insurance benefits for family members of part-time elected officials, and further, limiting city-paid health insurance benefits to individual primary coverage only for part-time elected officials who do not have access to health insurance benefits through their full-time employer.

BE IT RESOLVED:

SECTION 1: That it is hereby determined that the City of North Canton (“City”), having lost thousands of jobs and substantial income tax revenue following the closure of the City’s largest employer (The Hoover Company in 2008), and having since that time struggled financially, must find substantial savings and reduce the costs of city government.

SECTION 2: That the surrounding Stark County municipalities of Alliance, Louisville, Massillon, and Canal Fulton provide no city-paid health insurance benefits to part-time elected officials, and that to reduce the cost of city government, overly generous city-paid health benefits for part-time elected officials must be brought in line with what taxpayers experience themselves.

SECTION 3: That city-paid health insurance benefits for family members of part-time elected officials is no longer authorized.

SECTION 4: That city-paid health insurance benefits be available only to part-time elected officials who have no health insurance benefits available to them through their full-time employer and that city-paid

health insurance be available as primary individual coverage only and not serve as secondary health insurance coverage.

SECTION 5: That the Director of Finance of the City of North Canton is only authorized to draw funds for the payment of city-paid health insurance for part-time elected officials as outlined above.

SECTION 6: That if any provision of this Ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this Ordinance and that any and all legislation inconsistent herewith, be, and is hereby repealed.

SECTION 7: That this ordinance shall take effect and be in force upon adoption by a majority of voters at the polls. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

North Canton, OH