

Seacoast Online

LGC controversy: Are insurance plans invalid?

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CONCORD — Illegal "shell companies" formed in Delaware by the Local Government Center have no ability to do business in New Hampshire, Bureau of Securities Regulations attorney Earle Wingate III told the Herald last week. But according to LGC's own documents, those illegal companies signed off on current contracts for public employees' health, dental and prescription drug insurance.

Wingate would not confirm whether that means the state's public employees and retirees are without legal health insurance plans.

"That's one step down the road," he said Monday. "A process needs to take place."

Wingate was assigned by the secretary of state's office to investigate LGC operations and on Monday reiterated his published findings that the LGC's risk management pools are "illegally constituted."

He also told the Herald that if the LGC signed insurance contracts, they would be valid — but if one of its shell subsidiaries endorsed insurance contracts, they would not be legal.

According to the LGC's financial reports, as well as the contract for public employees' Caremark prescription drug benefit, the LGC Health Trust LLC signed the contracts for employees' health and prescription drug insurance. In his report released last week, Wingate announced that the LGC Health Trust is illegally formed as a nonprofit limited liability company — an entity that doesn't legally exist in New Hampshire.

"We think there's a problem," Wingate said Monday. "We've made these charges and we're confident they're correct. But there is not a formal determination that (the risk management pools are) illegal."

But, he added, the process that needs to occur is for his findings to go before a hearings officer to "make a formal determination on these charges." The hearings officer's findings can be appealed by Wingate's office or the LGC to the N.H. Supreme Court.

Asked how public employees can be assured their health insurance coverage is legally binding, despite his recent findings, Wingate said, "I think inventive minds are at work. There are ways to structure this smoothly."

Similarly, in a statement released last week after Wingate's report was published, LGC Executive Director Maura Carroll addressed criticism of the LGC's corporate structure by saying, "LGC understands the necessity to correct any open issues and believes such a resolution can be found."

In April, the LGC proposed legislation that would have removed it from secretary of state oversight. In testimony to the Legislature, Carroll addressed the "corporate restructuring" by telling lawmakers the following: "While LGC's board believes that it acted legally and in appropriate response to advice from counsel, we are asking the Legislature to ratify the action in order to bring legal certainty and closure to the issue."

The legislation failed.

Formed as a health insurance pool to help the state's cities and towns achieve favorable rates, the LGC is "improperly constituted," should return to nonprofit status and reimburse tens of millions of dollars it collected from member communities, public employees and retirees overcharged for the past nine years, according to Wingate's Aug. 2 report.

"A sizable sum is immediately available for this purpose," according to the report, which states that a calculation method recommended by the BSR "would immediately free up between \$40 million and \$60 million, as measured in 2009" alone, wrote Wingate. "HealthTrust's 2010 annual filing shows it holds securities and cash and cash equivalents totaling \$104,364,569," according to the report.

In a written response, the LGC countered that if money is returned to participating communities, "those dollars would ultimately come from rate increases to cities and towns."

An investigation is ongoing, according to state officials.