

OPINION NO. 93-045**Syllabus:**

1. Where a board of county commissioners decreases the percentage of the premium paid by the county on behalf of county officers and employees for insurance coverage provided under R.C. 305.171, without any change in the amount of coverage thus provided, such a decrease constitutes a change in salary for purposes of Ohio Const. art. II, §20, and may not be applied to a county officer during the term of office the officer was serving at the time such decrease became effective.
2. Where a county has, during a county officer's term, decreased the percentage of the premium it pays on behalf of county officers for insurance coverage provided under R.C. 305.171, without any change in the amount of coverage thus provided, and where the officer has personally paid the premium difference in order to maintain that insurance coverage, the county must pay to such officer a cash sum representing the difference between the percentage of the premium formerly paid by the county and the percentage currently paid by the county. The county must reimburse a county officer for the difference in insurance premiums covering only the remainder of the term the officer was serving at the time the decrease became effective.

To: Greg Carroll, Adams County Prosecuting Attorney, West Union, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have requested an opinion concerning in-term changes in compensation of county officers. Your questions have been restated as follows:

1. If the board of county commissioners decreases the percentage of health insurance premiums paid by the county on behalf of county officers and employees pursuant to R.C. 305.171, does such decrease in payment on behalf of county officers violate Ohio Const. art. II, §20, which prohibits any change in the salary of county officers during their terms of office?
2. If the answer to the first question is yes, is the county obligated to pay its officers a cash sum equal to the value of the difference between the percentage previously paid and the percentage currently paid for such officers' health insurance premiums?

Information provided by a member of your staff indicates that the board of county commissioners already has decreased the percentage of the cost of the health insurance premium paid by the county on behalf of its officers and employees under R.C. 305.171, while the amount of health insurance coverage provided remains unchanged. Further, certain county officers have paid the difference themselves in order to maintain their health care coverage. For purposes of discussion, this opinion will assume that the premium cost of the health care coverage remains unchanged.

Authority of County Commissioners Under R.C. 305.171

The authority of a board of county commissioners to provide health insurance benefits for county officers and employees is set forth in R.C. 305.171, which states in part:

(A) The board of county commissioners of any county may contract for, purchase, or otherwise procure and pay *all or any part of* the cost of group insurance policies that may provide benefits including, but not limited to, hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, group legal services, or group life insurance, or a combination of any of the foregoing types of insurance or coverage *for county officers and employees and their immediate dependents* from the funds or budgets from which the officers or employees are compensated for services, issued by an insurance company, a medical care corporation organized under [R.C. Chapter 1737], or a dental care corporation organized under [R.C. Chapter 1740]. (Emphasis added.)

As stated in *State ex rel. Belknap v. Lavelle*, 18 Ohio St. 3d 180, 181, 480 N.E.2d 758, 759-60 (1985):

Two points are evident from the terms of this statute. First, the commissioners are not required to provide health insurance; second, if they do, they have the option of paying only a portion of the premium. It is obvious, from the plain language of this statute, that the board of county commissioners is under no obligation to pay the whole premium for health insurance of county employees.

Thus, R.C. 305.171(A) authorizes the board of county commissioners to provide health insurance benefits for its officers and employees and to pay all or only a portion of the premium. 1989 Op. Att'y Gen. No. 89-003 (syllabus, paragraph one). Further, the statute allows the board of county commissioners to change the portion of the premium to be paid by the county. See *State ex rel. Belknap v. Lavelle, supra*; 1984 Op. Att'y Gen. No. 84-069.

Article II, §20 of the Ohio Constitution

Although R.C. 305.171 authorizes the board of county commissioners to change the portion of the premium paid by the county for insurance coverage provided under that section, the question remains as to whether such change may be applied to county officers who had already begun serving a term at the time the decrease occurred.¹

Ohio Const. art. II, §20 states: "The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but *no change therein* shall affect the salary of any officer *during his existing term*, unless the office be abolished." (Emphasis added.) This constitutional provision thus "prohibits any change, whether an increase or decrease, in an officer's salary during his term." 1992 Op. Att'y Gen. No. 92-031 at 2-120. For purposes of art. II, §20, the term "salary" includes payments for fringe benefits, including health insurance premiums. *State ex rel Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976). Further, county officers are "officers" for purposes of art. II, §20. *Id.*; Op. No. 89-003.

¹ County employees are not covered by Ohio Const. art. II, §20.

"Change in Salary" for Purposes of Article II, §20

In analyzing a related question concerning an increase in the premium for insurance benefits in the same amount as formerly provided, Op. No. 89-003 states at 2-14 and 2-15:

Where a fringe benefit, paid in full by the employer, is instituted prior to the commencement of a public officer's term, the employer's payment of a subsequent increase in the cost of the same benefit during the officer's term is not considered increased or additional compensation. [1981 Op. Att'y Gen. No. 81-099]. Where, however, the county pays a greater *portion* of the officer's insurance benefit, an in-term increase of compensation occurs. [1984 Op. Att'y Gen. No. 84-069]. I concluded in Op. No. 84-069, at 2-224, that a constitutional prohibition existed where a board of county commissioners, during an officer's term, increased the *percentage* of health insurance premium paid from county funds from fifty percent to nearly one hundred percent of the cost. I stated that:

The payment of a county officer's health insurance premiums, like the payment of an officer's retirement contribution, constitutes a fringe benefit to the officer. By assuming and paying a greater portion of an officer's health insurance premiums than that paid when the officer commenced his term, the county is extending a more valuable fringe benefit to the officer and is thus increasing the officer's compensation. Therefore, a county elected officer may not receive the increase until the term which he was serving at the time of the increase expires.

(Emphasis in original.)

In the situation you describe, the board of county commissioners has decided to decrease the *portion* or percentage of the premium cost to be paid by the county for health insurance coverage for county officers and employees under R.C. 305.171. The amount of the health insurance coverage provided, however, will not change. The percentage of the premium that the county now proposes to pay on behalf of its officers is less than the percentage the county was paying at the time its officers commenced their terms. Applying the reasoning set forth in Op. No. 89-003 and Op. No. 84-069, such a decrease constitutes a change in salary for purposes of Ohio Const. art. II, §20, and may not be applied to a county officer during the term of office he was serving at the time such decrease became effective.

Maintaining Salaries of County Officers

Your second question asks whether the county must pay to those officers to whom the decrease in premium payment may not be applied a cash sum equal to the value of the difference between the percentage previously paid and the percentage currently paid for such officers' health insurance premiums.

A similar question concerning the application of Ohio Const. art. II, §20 was addressed in 1980 Op. Att'y Gen. No. 80-002 (overruled, in part, by 1983 Op. Att'y Gen. No. 83-036 and 1981 Op. Att'y Gen. No. 81-099) at 2-11:

While it might be possible to analyze the issue of a decrease in the cost of insurance coverage on the basis of whether the coverage provided to an

officeholder has changed in-term, the Supreme Court, in [*State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976)], indicated that the issue of in-term changes is to be analyzed not on the basis of coverage provided, but, rather, on the basis of the amount of public funds expended.² Applying the reasoning of *Parsons* set forth above, I am of the opinion that the provisions of art. II, §20 must be regarded as requiring a direct payment to an officer if the cost of insurance coverage is decreased during his term. (Footnote added.)

In the situation you describe, the county already has decreased the percentage of the insurance premium paid by the county on behalf of its officers and employees, and the difference between the percentage of the premium formerly paid by the county and the percentage currently paid by the county has been paid by the county officers themselves in order to maintain the same level of coverage. Relying upon the reasoning of Op. No. 80-002, the county must pay to any county officer, who was already serving a term at the time the decrease became effective, a cash sum representing the difference between the percentage of such premium formerly paid by the county and the percentage currently paid by the county. Such payments must be made to the officer for those premiums payable only for the remainder of the term the officer was serving at the time the decrease became effective.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Where a board of county commissioners decreases the percentage of the premium paid by the county on behalf of county officers and employees for insurance coverage provided under R.C. 305.171, without any change in the amount of coverage thus provided, such a decrease constitutes a change in salary for purposes of Ohio Const. art. II, §20, and may not be applied to a county officer during the term of office the officer was serving at the time such decrease became effective.
2. Where a county has, during a county officer's term, decreased the percentage of the premium it pays on behalf of county officers for insurance coverage provided under R.C. 305.171, without any change in the amount of coverage thus provided, and where the officer has personally paid the premium difference in order to maintain that insurance coverage, the county must pay to such officer a cash sum representing the difference between the percentage of the premium formerly paid by the county and the percentage currently paid by the county. The county must

² 1980 Op. Att'y Gen. No. 80-002 concluded that Ohio Const. art. II, §20 prohibits the payment of an increased premium for health insurance benefits for a county officer during his term, even if the benefits derived remain unchanged. Since the issuance of that opinion, the basis for determining whether an impermissible increase exists for purposes of art. II, §20 has changed. As summarized in 1989 Op. Att'y Gen. No. 89-003 at 2-14: "Where a fringe benefit, paid in full by the employer, is instituted prior to the commencement of a public officer's term, the employer's payment of a subsequent increase in the cost of the *same benefit* is not considered increased or additional compensation." (Emphasis added.)

reimburse a county officer for the difference in insurance premiums covering only the remainder of the term the officer was serving at the time the decrease became effective.

OPINION NO. 93-046

Syllabus:

The board of county commissioners may not appropriate moneys from the delinquent tax and assessment collection fund, established under R.C. 321.261, to the clerk of courts.

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have requested an opinion on the following question: "May the Board of County Commissioners appropriate monies from the DRETAC fund (Delinquent tax and assessment collection fund, O.R.C. 321.261) to the County Clerk of Courts to reimburse the clerk for expenses incurred in [the collection] of delinquent taxes and assessments, pursuant to the statute?"

Delinquent Tax and Assessment Collection Fund

R.C. 321.261 states:

Five per cent of all delinquent real property, personal property, and manufactured home taxes and assessments collected by the county treasurer shall be deposited in the delinquent tax and assessment collection fund, which shall be created in the county treasury. *The moneys in the fund, one-half of which shall be appropriated by the board of county commissioners to the treasurer and one-half of which shall be appropriated to the county prosecuting attorney, shall be used solely in connection with the collection of delinquent real property, personal property, and manufactured home taxes and assessments.*

Annually by the first day of December, the treasurer and the prosecuting attorney each shall submit a report to the board regarding the use of the moneys appropriated to their respective offices from the delinquent tax and assessment collection fund. Each report shall specify the amount appropriated to the office during the current calendar year, an estimate of the amount so appropriated that will be expended by the end of the year, a summary of how the amount appropriated has been expended in connection with delinquent tax collection activities, and an estimate of the amount that will be credited to the fund during the ensuing calendar year. (Emphasis added.)

R.C. 321.261 thus requires each county to establish a delinquent tax and assessment collection fund within the county treasury. Pursuant to R.C. 321.261, "one-half of [the moneys in the fund] *shall* be appropriated by the board of county commissioners to the treasurer and one-half...*shall* be appropriated to the county prosecuting attorney." (Emphasis added.) As stated in *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one): "In statutory construction... the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a