

OPINION NO. 2008-018

Syllabus:

2008-018

A board of township trustees, in accordance with R.C. 505.60, may procure and pay for all or a portion of the cost of a high-deductible health care insurance policy that provides the benefits enumerated in R.C. 505.60(A) for township personnel and may, at the same time, establish and maintain with township moneys a program of self-insurance in accordance with R.C. 9.833 to pay the co-payments and deductible amounts not paid by the health care insurance policy for the benefits listed in R.C. 505.60(A). (1989 Op. Att'y Gen. No. 89-009, overruled in part.)

To: Timothy P. Gleeson, Vinton County Prosecuting Attorney, McArthur, Ohio

By: Nancy H. Rogers, Attorney General, June 16, 2008

You have requested the Attorney General's opinion concerning the authority of a board of township trustees to provide health care benefits for township officers and employees. As you explain in your opinion request, certain townships in Vinton County, in an attempt to lower their health insurance premium costs, contemplate obtaining insurance that has a higher deductible and higher co-payments than are commonly offered under health insurance policies. In addition, the townships would like to reimburse township personnel directly for all co-payments they incur, as well as for all health care expenses they incur that are included in the deductible amount, under the township's health care insurance policy. By providing both coverage under a high-deductible health care insurance policy and payment for all co-payments and deductibles under such policy, the township will assure that township personnel incur absolutely no personal expense for any covered health care costs. We also understand that the townships contemplate making the reimbursements for co-payments and deductible amounts directly to their officers and employees from township funds.

As you further note, R.C. 505.60 authorizes a township to procure and pay for all or a portion of health care insurance for township personnel, and R.C. 9.833 authorizes townships, among other entities, to establish and maintain self-insured health care benefit programs. You ask whether townships may use their authority under both R.C. 505.60 and R.C. 9.833 in combination in order to provide township personnel the type of health care benefit program you describe.

Authority of Township Trustees to Provide Health Care Benefits

We begin with the well-established principle that a board of township trustees is a creature of statute with those powers and duties vested in it by the General Assembly. *See In re Village of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994) (it is a "well-settled principle that township trustees can exercise only those powers granted by the General Assembly").¹ Thus, whether a board of township trustees may provide health care benefits for township personnel in the manner you describe depends upon whether the General Assembly has authorized the board to establish such a health care program.

The General Assembly has granted townships many options in providing health care benefits for township personnel. For example, R.C. 505.60 states, in pertinent part:

(A) As provided in this section and [R.C. 505.601],² the board of township trustees of any township may procure and pay all or any part of

¹ Because you have not asked specifically about the authority of those townships exercising limited home rule powers under R.C. Chapter 504, this opinion addresses the authority of only those townships that are not limited home rule townships. *See generally, e.g.*, 2003 Op. Att'y Gen. No. 2003-026.

² R.C. 505.601 authorizes a township to reimburse its personnel for health care insurance premiums they incur, but only if, among other things, the "board of

the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees

(B)

The board may also contract for group health care services with health insuring corporations holding certificates of authority under [R.C. Chapter 1751] for township officers and employees

. . . .

(D)

The board may also provide the benefits described in this section through an individual self-insurance program or a joint self-insurance program as provided in [R.C. 9.833]. (Footnote and emphasis added.)

Thus, under R.C. 505.60(A) a township may procure and pay all or any portion of the cost of insurance policies that provide the types of health care benefits described therein.

The first portion of your question concerns the authority of a board of township trustees to procure a high-deductible health care insurance policy covering township personnel. R.C. 505.60(A) expressly authorizes a township to procure and pay all or a portion of the cost of insurance policies that provide any combinations of the benefits listed therein, *e.g.*, hospitalization, eye care, prescription drugs. Nothing in R.C. 505.60 addresses the amount of the deductible under any such insurance policy. Because the General Assembly was silent with respect to the deductible allowable under any such insurance policy, we find that the General Assembly did not intend to limit, based upon the amount of the deductible, the township's ability to procure health care insurance policies that provide the benefits enumerated in R.C. 505.60(A). We conclude, therefore, that R.C. 505.60(A) authorizes a board of township trustees to procure and pay all or a portion of the cost of a high-deductible health care insurance policy that provides any of the benefits listed in R.C. 505.60(A).

township trustees does not procure an insurance policy or group health care services as provided in [R.C. 505.60].” R.C. 505.601 specifically limits the circumstances in which a board of township trustees may make such reimbursements, as follows: 1) the township has not procured health care coverage for township personnel under R.C. 505.60; 2) reimbursement is only for each out-of-pocket health care premium the officer or employee incurs for the types of insurance benefits listed in R.C. 505.60(A); and 3) the township adopts a resolution concerning such reimbursement that meets the requirements established by R.C. 505.601. R.C. 505.601 does not, however, mention reimbursement of township personnel for health care costs that are incurred as co-payments or that are for amounts included in the deductible under a health care insurance plan.

The second portion of your question concerns the authority of a board of township trustees to supplement the health care benefits provided township personnel under a high-deductible health care insurance policy provided under R.C. 505.60(A) with a program of self-insurance under R.C. 9.833³ that would reimburse township personnel for any co-payments or deductible amounts not paid by the health care insurance policy. As provided by R.C. 505.60(D), “[t]he board [of township trustees] may *also* provide the benefits described in this section through an individual self-insurance program or a joint self-insurance program as provided in section 9.833 of the Revised Code.” (Emphasis added.) Although this portion of R.C. 505.60(D) may be read as authorizing a board of township trustees to proceed under R.C. 9.833 as an alternative to providing health care benefits through policies

³ R.C. 9.833 states, in pertinent part:

(A) As used in this section, “political subdivision” means a municipal corporation, *township*, county, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, and agencies and instrumentalities of these entities.

(B) *Political subdivisions that provide health care benefits for their officers or employees may do any of the following:*

(1) Establish and maintain an individual self-insurance program *with public moneys* to provide authorized health care benefits, including but not limited to, health care, prescription drugs, dental care, and vision care, in accordance with division (C) of this section;

(2) Establish and maintain a health savings account program whereby employees or officers may establish and maintain health savings accounts in accordance with section 223 of the Internal Revenue Code. Public moneys may be used to pay for or fund federally qualified high deductible health plans that are linked to health savings accounts or to make contributions to health savings accounts. A health savings account program may be a part of a self-insurance program.

(3) After establishing an individual self-insurance program, agree with other political subdivisions that have established individual self-insurance programs for health care benefits, that their programs will be jointly administered in a manner specified in the agreement;

(4) Pursuant to a written agreement and in accordance with division (C) of this section, join in any combination with other political subdivisions to establish and maintain a joint self-insurance program to provide health care benefits;

(5) Pursuant to a written agreement, join in any combination with other political subdivisions to procure or contract for policies, contracts, or plans of insurance to provide health care benefits, which may include a health savings account program, for their officers and employees subject to the agreement;

(6) *Use in any combination any of the policies, contracts, plans, or programs authorized under this division.* (Emphasis added.)

of insurance under R.C. 505.60, we believe that the General Assembly intended that R.C. 9.833 provide political subdivisions, including townships, an additional, rather than alternative, means of providing health care benefits for subdivision personnel.⁴

Under R.C. 9.833(B)(1), a political subdivision, including a township, may establish and maintain a self-insurance program with public moneys for health care benefits for its personnel. The township you describe plans to use the self-insurance program to pay any co-payments or deductibles associated with the health care benefits provided township personnel under a high-deductible health care insurance policy procured under R.C. 505.60. Because the payments under the self-insurance program will be for health care expenses that are, but for the co-payments and deductibles, covered by a health care insurance policy procured under R.C. 505.60, such payments under the self-insurance program are for “health care expenses,” as authorized by R.C. 9.833(B)(1). We conclude, therefore, that a board of township trustees that has procured a policy of health care insurance under R.C. 505.60 may also establish and maintain with township moneys a program of self-insurance under R.C. 9.833 to pay township personnel for co-payments and deductible amounts under the township’s health care insurance policy.⁵

⁴ See 2002 Op. Att’y Gen. No. 2002-026 at 2-172 to 2-173 (“R.C. 9.833 does not use the term ‘partial self-insurer.’ However, the authority of a political subdivision to provide health care benefits in part by means of self-insurance and in part by means of one or more insurance policies is evident from the language of R.C. 9.833 authorizing the political subdivision to ‘[u]se in any combination any of the policies, contracts, plans, or programs authorized under [R.C. 9.833(B)].’ R.C. 9.833(B)(5). The statute authorizes individual self-insurance, joint administration, and joint self-insurance, as well as policies, contracts, or plans of insurance. Therefore, political subdivisions, including county library districts, may use any of these arrangements in any combination to become self-insurers or partial self-insurers of health care benefits that they are authorized to provide. See, e.g., 1991 Op. Att’y Gen. No. 91-048 (describing county health care benefit plan that is, in part, self-funded). See generally 1981 Op. Att’y Gen. No. 81-069’); 2001 Op. Att’y Gen. No. 2001-025 at 2-141 (finding that R.C. 505.60 and R.C. 9.833 “[evidence] a clear intent by the General Assembly to grant townships a broad, flexible range of options under which to provide health care coverage for their officers and employees”). See generally, e.g., 1991 Op. Att’y Gen. No. 91-044 (finding that the enactment of R.C. 9.833 was intended to enhance the existing options available to political subdivisions to provide health care benefits for subdivision personnel).

⁵ Prior to the enactment of R.C. 9.833 in 1989-1990 Ohio Laws, Part IV, 6412 (Am. Sub. H.B. 737, eff. April 11, 1991), 1989 Op. Att’y Gen. No. 89-009 concluded in the syllabus: “A board of township trustees may not make monetary payments or grant compensation increases to township officers and employees as reimbursement for deductible payments those officers and employees incur in connection with health care insurance policies that are procured and paid for by the board pursuant to the terms of R.C. 505.60(A).” Because of the General Assembly’s enactment of R.C. 9.833, we hereby overrule the portion of 1989 Op. Att’y Gen.

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that, a board of township trustees, in accordance with R.C. 505.60, may procure and pay for all or a portion of the cost of a high-deductible health care insurance policy that provides the benefits enumerated in R.C. 505.60(A) for township personnel and may, at the same time, establish and maintain with township moneys a program of self-insurance in accordance with R.C. 9.833 to pay the co-payments and deductible amounts not paid by the health care insurance policy for the benefits listed in R.C. 505.60(A). (1989 Op. Att'y Gen. No. 89-009, overruled in part.)