June 16, 1998

OPINION NO. 98-019

The Honorable Paul F. Kutscher, Jr.
Seneca County Prosecuting Attorney
81 Jefferson Street
Tiffin, Ohio 44883

Dear Prosecutor Kutscher:

You have requested an opinion concerning the authority of a township to provide health care insurance under R.C. 505.60 for its officers and employees. You question the meaning of the requirement in R.C. 505.60 that a township provide "uniform coverage" for such persons.

Let us begin by examining R.C. 505.60, which states, in pertinent part:

> (A) The board of township trustees of any township may procure and pay *all or any part 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. If the board so procures any such insurance policies, the board shall *provide uniform coverage* under these policies for township officers and full-time township employees and their immediate dependents and may provide coverage under these policies for part-time township employees and their immediate dependents, from the funds or budgets from which the officers or employees are compensated for services, such policies to be issued by an insurance company duly authorized to do business in this state. Any township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers and employees.
>
> 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. If the board so contracts, it shall provide *uniform coverage* under any such contracts for township officers and full-time township employees and their immediate dependents and may provide coverage under such contracts for part-time township employees and their immediate dependents, provided that each officer and employee so covered is permitted to:

> (1) Choose between a plan offered by an insurance company and a plan offered by a health insuring corporation, and provided further that the officer or employee pays any amount by which the cost of the plan chosen exceeds the cost of the plan offered by the board under this section;
>
> (2) Change the choice made under division (A) of this section at a time each year as determined in advance by the board.
>
> An addition of a class or change of definition of coverage to the plan offered by the board may be made at any time that it is determined by the board to be in the best interest of the township. (Emphasis added.)

R.C. 505.60(A) thus authorizes a board of township trustees to procure and provide health care insurance of the types listed therein for the township's officers, full-time employees, and their immediate dependents.

The question you ask arises from a situation in which a board of township trustees has procured health care insurance for the township's officers and full-time employees and for their dependents. The township has chosen to pay the entire cost of insuring each full-time township employee and the employee's dependents. With respect to the cost of insuring a township officer and the officer's dependents, however, the township is paying only that portion of the cost attributable to the officer. While coverage under the insurance policy is available for the dependents of a township officer, the township has decided not to pay any portion of the cost of insuring an officer's dependents. You ask whether the township's provision of health care insurance for its officers and employees in this manner comports with the "uniform coverage" requirement of R.C. 505.60(A).

Let us begin by noting that a board of township trustees, as a creature of statute, may exercise only those powers conferred upon it by statute. *See Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875). In the provision of health and medical benefits for township personnel, a board of township trustees is restricted by various terms and requirements imposed upon it by R.C. 505.60(A). As summarized in 1990 Op. Att'y Gen. No. 90-064 at 2-271 :

> R.C. 505.60 allows the board to provide insurance for its officers and employees only in the manner specified in the statute; further, any arrangements incidental thereto are similarly restricted by the terms of the statute. Among the requirements imposed upon the board of township trustees by R.C. 505.60(A) is that, should the board decide to provide insurance, "the board *shall provide uniform coverage* under these policies for township officers and full-time township employees and their immediate [dependents]"(various citations omitted)).

The word "coverage" is defined in *Black's Law Dictionary* 365 (6th ed. 1990), as meaning, "[i]n insurance, *amount and extent of risk* contractually covered by insurer. The assumption of risk of occurrence of the event insured against before its occurrence."

(Emphasis added.) According to this definition, the types of benefits which R.C. 505.60(A) authorizes boards of township trustees to procure and pay for, *e.g.*, hospitalization, eye care, prescription drugs, constitute the "coverage" that must be uniform. Thus, the term "uniform coverage," as used in R.C. 505.60(A) refers to uniform benefits available under the insurance policy or policies.

The manner in which a township is to provide such uniform coverage under R.C. 505.60(A) was discussed in 1984 Op. Att'y Gen. No. 84-086 (modified on other grounds by 1990 Op. Att'y Gen. No. 90-064), which addressed the authority of a township to distinguish between full-time employees and part-time employees in the provision of health insurance coverage and also whether R.C. 505.60(A) required any insurance policy procured thereunder to include the immediate dependents of the township's employees. At the time 1984 Op. Att'y Gen. No. 84-086 was issued, R.C. 505.60(A) required uniform coverage for "township officers and employees and their immediate dependents." 1979-1980 Ohio Laws, Part I, 962 (Sub. S.B. 285, eff. Aug. 8, 1980).[1] R.C. 505.60(A) referred simply to employees, without mention of their part-time or full-time status. Based upon the plain language of R.C. 505.60(A), 1984 Op. Att'y Gen. No. 84-086 reasoned, as follows:

> R.C. 505.60 does not permit distinctions to be drawn among groups of officers and employees, even if the persons within each group are similarly situated. Rather, the word "uniform" must be given its ordinary meaning: "consistent in action, intention, effect, etc. [a *uniform* policy]." *Webster's New World Dictionary* 1551 (2d college ed. 1978). *See generally Baker v. Powhatan Mining Co.*, 146 Ohio St. 600, 67 N.E.2d 714 (1946). Every township officer and employee who receives health insurance benefits under R.C. 505.60 is entitled, under the language of that section, to receive *benefits* which are uniform with respect to those granted to every other officer and employee under that section. (Emphasis added.)

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[1] In 1985-1986 Ohio Laws, Part II, 4468 (Am. H.B. 470, eff. March 5, 1987), the General Assembly amended R.C. 505.60(A) to specify that a township that provided insurance thereunder was required to provide uniform coverage for "township officers, and *full-time* township employees and their immediate dependents" (emphasis added). Based upon this amendment, 1990 Op. Att'y Gen. No. 90-064 modified the conclusion reached in 1984 Op. Att'y Gen. No. 84-086.

1984 Op. Att'y Gen. No. 84-086 at 2-296. Accordingly, the opinion concluded that, "in providing hospital and medical insurance under R.C. 505.60, a board of township trustees may not distinguish between part-time and full-time employees." *Id.* at 2-298.

1984 Op. Att'y Gen. No. 84-086 then addressed the duty of a township to provide insurance benefits for the immediate dependents of its officers and employees. Upon examination of the portion of R.C. 505.60(A) that required a township to provide "uniform coverage for all township officers and employees and their immediate dependents," the opinion concluded that, "[t]he plain meaning of the language used in R.C. 505.60 is that, if health insurance is provided pursuant to that section, the coverage must be uniform as to all persons mentioned, including the immediate dependents of employees." *Id*. (footnote omitted).

The "uniform coverage" requirement of R.C. 505.60(A) was again addressed in 1990 Op. Att'y Gen. No. 90-064 in a slightly different context. 1990 Op. Att'y Gen. No. 90-064 agreed with the 1984 opinion in finding that, "should [a] township decide to offer health insurance benefits under R.C. 505.60(A), it must make the same coverage which is available to all township officers and full-time employees available also to their immediate dependents," 1990 Op. Att'y Gen. No. 90-064 at 2-272. Based upon the township's authority under R.C. 505.60(A) to "procure and pay all or *any part of the cost*" (emphasis added) of such insurance, however, the 1990 opinion concluded that a board of township trustees may pay only part of the cost of providing such insurance benefits for the township's officers and its full-time employees and their dependents, *i.e.*, the portion attributable to such officers and employees, "so long as coverage is *available to* the officers' and employees' dependents on a basis equal to that of the officers and employees, even though the cost of the dependents' coverage will not be borne by the township." *Id.* (emphasis added).

In the situation you describe, even assuming that the same benefits will be provided to the township's officers and their immediate dependents as will be provided to the township's full-time employees and their immediate dependents, the township does not plan to provide these benefits to its officers and full-time employees on the same basis. Instead, the township will pay the full cost of insuring its full-time employees and their immediate dependents, while paying only part of the cost of insuring its officers and their immediate dependents. Although R.C. 505.60(A) does authorize a township to pay less than the entire cost of providing insurance coverage under R.C. 505.60(A) for its officers and full-time employees and their immediate dependents, it does not authorize a township to make such insurance available to such officers and full-time employees on different terms. By paying a larger part of the cost of insuring its full-time employees and their immediate dependents than it pays to insure its officers and their immediate dependents, the township is not complying with its duty under R.C. 505.60(A) to provide uniform coverage for its officers and full-time employees and their immediate dependents.

Based on the foregoing, it is my opinion, and you are hereby advised that, R.C. 505.60(A) requires a township that procures insurance thereunder for its officers and full-time employees and their immediate dependents to procure insurance offering the same benefits to its officers and full-time employees and their immediate dependents and to pay on behalf of each such officer and the officer's immediate dependents the same part of the cost of providing such insurance for each full-time employee and the employee's immediate dependents.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

June 16, 1998

The Honorable Paul F. Kutscher, Jr.
Seneca County Prosecuting Attorney
81 Jefferson Street
Tiffin, Ohio 44883

SYLLABUS: 98-019

R.C. 505.60(A) requires a township that procures insurance thereunder for its officers and full-time employees and their immediate dependents to procure insurance offering the same benefits to its officers and full-time employees and their immediate dependents and to pay on behalf of each such officer and the officer's immediate dependents the same part of the cost of providing such insurance for each full-time employee and the employee's immediate dependents.