November 12, 2002

The Honorable Robert J. Batchelor
Coshocton County Prosecuting Attorney
239 N. Fourth Street
Coshocton, Ohio 43812-1116

SYLLABUS: 2002-026

1. A county library district is a political subdivision for purposes of R.C. 9.833. As such, the district may obtain health care benefits for its employees by becoming a self-insurer or partial self-insurer, in accordance with R.C. 9.833 and Auditor of State Bulletin 2001-005. (1993 Op. Att'y Gen. No. 93-031, syllabus, paragraph 2, approved and followed.)

2. Pursuant to R.C. 9.833, a county and a county library district may each establish an individual self-insurance program for health care benefits and agree to have their programs jointly administered, or may agree to establish and maintain a joint self-insurance program for health care benefits.

3. The board of library trustees of a county library district may require that its employees work a minimum number of hours per week in order to be eligible to receive health care benefits through the library, provided that the requirement is reasonable and in compliance with constitutional standards.

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OPINION NO. 2002-026

The Honorable Robert J. Batchelor
Coshocton County Prosecuting Attorney
239 N. Fourth Street
Coshocton, Ohio 43812-1116

Dear Prosecutor Batchelor:

We have received your request for an opinion concerning the authority of the board of library trustees of the Coshocton Public Library to obtain health insurance for its employees. You have raised the following questions:

1. Does the Board of Library Trustees of the Coshocton Public Library have the authority to obtain health insurance for its employees by becoming a "self-insurer" or "partial self-insurer," while maintaining compliance with R.C. 9.833, R.C. 2744.08, R.C. 2744.081, and Auditor of State Bulletin 2001-005, if applicable?

2. Is the Coshocton Public Library authorized to join with Coshocton County's self-insured health insurance plan for its employees?

3. Is it legal for the Board of Library Trustees of the Coshocton Public Library to require that employees of the Coshocton Public Library work at least thirty hours per week to be eligible to receive health insurance through the library?

Let us first consider generally the nature and the powers of the Coshocton Public Library. You have informed us that the Coshocton Public Library is the library of a county library district. *See* R.C. 3375.19-.24. Such a library is under the control and management of a board of library trustees that has various powers granted by statute. R.C. 3375.22; *see* R.C. 3375.33-.411; 1996 Op. Att'y Gen. No. 96-057; 1924 Op. Att'y Gen. No. 2003, vol. 1, p. 652 (syllabus, paragraph 1) ("[a] board of trustees of a library is created by statute, and has only such powers as are provided in the statute, and such other powers as are reasonably necessary to the accomplishment of the purposes of the board"). Among its powers are the power to appoint and fix the compensation of

library employees and the power to procure health insurance for its employees. R.C. 3375.40(G) and (L).

The statutory language governing the procurement of health insurance states:

> Each board of library trustees appointed pursuant to [section] … 3375.22 [county library district] … of the Revised Code may:
>
> (L) *Procure and pay all or part of the cost of group* life, hospitalization, surgical, major medical, disability benefit, dental care, eye care, hearing aids, or prescription drug *insurance, or a combination of any of the foregoing types of insurance or coverage*, whether issued by an insurance company or a health insuring corporation duly licensed by the state, *covering its employees* and in the case of hospitalization, surgical, major medical, dental care, eye care, hearing aids, or prescription drug insurance, *also covering the dependents and spouses of such employees*, and in the case of disability benefits, *also covering spouses of such employees*.

R.C. 3375.40 (emphasis added).[1]

Let us turn now to your first question. You have asked about the ability of the board of library trustees of a county library district to become a self-insurer or partial self-insurer while maintaining compliance with R.C. 9.833, R.C. 2744.08, R.C. 2744.081, and Auditor of State Bulletin 2001-005, if applicable.

R.C. 9.833 authorizes political subdivisions that provide their employees with health care benefits to use various methods for providing such benefits, including an individual self-insurance program or a joint self-insurance program. For purposes of R.C. 9.833, a political subdivision is defined as "a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state." R.C. 9.833(A). Thus, a county library district has self-insurance authority pursuant to R.C. 9.833 if it is a body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

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[1] This opinion considers only health care benefits that may be provided by a board of library trustees pursuant to R.C. 3375.40 and in accordance with R.C. 9.833. It does not consider health care benefits that may be agreed upon through the collective bargaining process. *See* R.C. 124.81(F); R.C. Chapter 4117; 1989 Op. Att'y Gen. No. 89-009, at 2-34 n.1. Because you have asked about the board of library trustees of a county library district, this opinion is addressed to such a board and district. However, the analysis and conclusions relating to R.C. 3375.40 are applicable to all boards of library trustees governed by that section. *See also* 1996 Op. Att'y Gen. No. 96-057.

In 1993 Op. Att'y Gen. No. 93-031, a prior Attorney General considered whether a board of library trustees of a county library district comes within this definition and concluded that it does. I concur in that conclusion. *See* 1993 Op. Att'y Gen. No. 93-031 (syllabus, paragraph 2).

By statute, the board of library trustees of a county library district is described as a body politic and corporate. R.C. 3375.33. The operation of a public library has long been considered a governmental activity. *See, e.g., Brown v. State ex rel. Merland*, 120 Ohio St. 297, 166 N.E. 214 (1929); 2002 Op. Att'y Gen. No. 2002-016; 1953 Op. Att'y Gen. No. 2994, p. 387. A county library district consists of designated county territory and serves a geographic area smaller than that of the state. R.C. 3375.19-.212; R.C. 3375.40; 2002 Op. Att'y Gen. No. 2002-016; 1993 Op. Att'y Gen. No. 93-031. Therefore, a county library district is a political subdivision for purposes of R.C. 9.833 and has the self-insurance powers granted by R.C. 9.833.

R.C. 9.833 provides express authority for a political subdivision to establish and maintain an individual self-insurance program and to agree with another subdivision to have their individual self-insurance programs jointly administered, or to join with other political subdivisions to establish and maintain a joint self-insurance program. R.C. 9.833(B)(1), (2), and (3). There is also authority for a political subdivision to contract with other political subdivisions to procure or contract for policies, contracts, or plans of insurance. R.C. 9.833(B)(4).[2]

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[2] With respect to the types of self-insurance programs that are authorized, R.C. 9.833 states:

> (B) Political subdivisions that provide health care benefits for their officers or employees may do any of the following:
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> (1) Establish and maintain an individual self-insurance program with public moneys to provide authorized health care benefits in accordance with division (C) of this section;
>
> (2) 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;
>
> (3) 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;
>
> (4) 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 for their officers and employees subject to the agreement;
>
> (5) Use in any combination any of the policies, contracts, plans, or programs authorized under this division.

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.

You have expressed interest in the library board's duty to maintain compliance with R.C. 9.833, R.C. 2744.08, R.C. 2744.081, and Auditor of State Bulletin 2001-005, if applicable. R.C. 9.833 establishes various standards that govern individual or joint self-insurance programs established by county library districts or other political subdivisions. The statute requires a reserve of such funds "as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential cost of health care benefits for the officers and employees of the political subdivision." R.C. 9.833(C)(1). The statute also specifies the need for the creation of a special fund, provides for the allocation of costs, and requires that a member of the American Academy of Actuaries prepare a written evaluation of the reserve funds. R.C. 9.833(C)(2) and (4).[3] In addition, the statute authorizes contracts for the administration of individual or joint self-insurance programs and authorizes various means of funding the programs, including the issuance of bonds. R.C. 9.833(C)(3), (5), (6), (8), and (9). It also permits two or more political subdivisions to establish a joint health care cost containment program. R.C. 9.833(C)(7). A board of library trustees that enters into a self-insurance or joint self-insurance program pursuant to R.C. 9.833 is permitted to take any of the actions authorized by R.C. 9.833, provided that there is compliance with applicable requirements imposed by R.C. 9.833.

You are also interested in compliance with R.C. 2744.08 and R.C. 2744.081. These provisions are part of R.C. Chapter 2744, which governs the tort liability of political subdivisions. For purposes of Chapter 2744, "[p]olitical subdivision" includes a body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, and thus includes the board of library trustees of a county library district. R.C. 2744.01(F). R.C. 2744.08 authorizes a political subdivision to secure liability insurance covering the tort liability of the political subdivision and its employees, or to establish a self-insurance program and decide whether to have it jointly administered with the self-insurance programs of other political subdivisions. R.C. 2744.08. The companion provision, R.C. 2744.081, authorizes political subdivisions to join together to establish a joint self-insurance pool to provide payment for tort liability of the political subdivisions and their employees. R.C. 2744.081(A). In addition

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[3] The requirements set forth in R.C. 9.833(C)(1), (2), and (4) do not apply to individual self-insurance programs in municipal corporations, townships, or counties. R.C. 9.833(D).

to covering liabilities under R.C. Chapter 2744, a joint self-insurance pool may cover a variety of other liabilities or risks, including public general liability, professional liability, motor vehicle liability, aircraft liability, and environmental impairment; there is no authority for it to cover health care benefits. R.C. 2744.081(E).

A board of library trustees that decides to secure liability coverage pursuant to R.C. 2744.08 or R.C. 2744.081 must comply with the relevant provisions of these sections. However, R.C. 2744.08 and R.C. 2744.081 do not apply to insurance or self-insurance programs for health care benefits. Therefore, R.C. 2744.08 and R.C. 2744.081 do not affect a political subdivision's procurement of health care coverage pursuant to R.C. 9.833. R.C. 2744.08 and R.C. 2744.081 do permit political subdivisions to establish and maintain types of self-insurance other than those authorized by R.C. 2744.08 and 2744.081, including self-insurance and joint self-insurance programs for health care benefits under R.C. 9.833. *See* R.C. 2744.08(C); R.C. 2744.081(G).

You have asked also about compliance with Auditor of State Bulletin 2001-005. This Bulletin was issued to provide political subdivisions with guidance regarding the implementation of self-insurance programs and governmental insurance pools, including self-insurance and joint self-insurance under R.C. 9.833. Therefore, it is a resource containing information that is relevant to a political subdivision that establishes a self-insurance or joint self-insurance program for health care benefits.

Auditor of State Bulletin 2001-005 clarifies the legal and accounting requirements of R.C. 9.833, R.C. 2744.08, and R.C. 2744.081, and provides guidance relating to the funding of self-insured plans. The Bulletin sets forth suggested audit procedures, describes actuarial qualifications and standards, and includes a sample risk management disclosure to be included with the audited financial statement of a cash-basis subdivision. The Bulletin contains highly technical contents and indicates that it may be appropriate to discuss them with a qualified actuary, an independent accountant, or the regional Auditor of State's Office. Thus, the Bulletin provides practical assistance for a county library district or other political subdivision that undertakes a self-insurance or joint self-insurance health care program pursuant to R.C. 9.833.

In response to your first question, we conclude that a county library district is a political subdivision for purposes of R.C. 9.833. As such, the district may obtain health care benefits for its employees by becoming a self-insurer or partial self-insurer, in accordance with R.C. 9.833 and Auditor of State Bulletin 2001-005.

Let us turn now to your second question, which asks about the ability of the Coshocton Public Library to join with Coshocton County's health insurance plan for its employees. As discussed above, the county library district is a political subdivision and is authorized to enter into any of the health care benefit programs permitted under R.C. 9.833. Counties are also classified as political subdivisions under R.C. 9.833 and thus may act pursuant to this section. R.C. 9.833(A). As two separate political subdivisions, the Coshocton Public Library and Coshocton County may enter into any of the joint arrangements authorized by R.C. 9.833. In particular, if the county and the library each establish an individual self-insurance program, they

may agree to have their programs jointly administered in a manner specified in the agreement. R.C. 9.833(B)(2). Alternatively, the county and the library may join, in accordance with R.C. 9.833(C), to establish and maintain a joint self-insurance program to provide health care benefits. R.C. 9.833(B)(3).[4]

It should be noted that, as a county public library district, the Coshocton Public Library is a political subdivision separate from the county. *See, e.g.,* R.C. 3375.33; 2002 Op. Att'y Gen. No. 2002-016. Therefore, the Coshocton Public Library is not a county agency that can simply be included in the health coverage that the county provides for its employees. Rather, the county library district may join in a self-insurance health plan provided by Coshocton County only in the manner provided in R.C. 9.833.

R.C. 9.833 thus prescribes the types of individual self-insurance and joint self-insurance programs that are available to political subdivisions for the provision of health care benefits. Accordingly, we conclude that, pursuant to R.C. 9.833, a county and a county library district may each establish an individual self-insurance program for health care benefits and agree to have their programs jointly administered, or may agree to establish and maintain a joint self-insurance program for health care benefits.

Your third question concerns the library board's authority to require that library employees work at least thirty hours per week to be eligible for health care coverage. You have asked whether such a policy is permissible under Ohio law.

Pursuant to Ohio law, the granting of health care coverage to public employees is a fringe benefit. The appointing authority with power to hire and fix compensation is authorized to grant such fringe benefits, subject to any provisions of law restricting that authority. *See Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); 1989 Op. Att'y Gen. No. 89-009; 1981 Op. Att'y Gen. No. 81-052; 1980 Op. Att'y Gen. No. 80-030.

The board of library trustees of a county library district is authorized to "[a]ppoint and fix the compensation of all of the employees of the free public library under its jurisdiction." R.C. 3375.40(G). With respect to the provision of health care benefits, the authority to compensate is restricted by R.C. 3375.40(L), quoted above. This provision authorizes the board of library trustees to procure and pay all or part of the cost of various types of group health benefits "covering its employees" and in certain instances also covering spouses and dependents. R.C. 3375.40(L).

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[4] Although, as stated in note 3, *supra*, divisions (C)(1), (2), and (4) of R.C. 9.833 do not apply to individual self-insurance programs in municipal corporations, townships, or counties, it appears that they do apply to a joint self-insurance program that includes a county. R.C. 9.833(B)(3), (C), and (D).

R.C. 3375.40(L) authorizes but does not require a board of library trustees to procure the various health benefits listed. It restricts the authority of the board of library trustees, requiring that if the board chooses to provide health benefits, it must do so in a manner that is consistent with the statute. *See, e.g.,* 1998 Op. Att'y Gen. No. 98-019; 1993 Op. Att'y Gen. No. 93-070; 1990 Op. Att'y Gen. No. 90-064.

R.C. 9.833 authorizes individual self-insurance programs and joint self-insurance programs for "[p]olitical subdivisions that provide health care benefits for their officers or employees." R.C. 9.833. Apart from authorizing self-insurance options, R.C. 9.833 does not modify or expand the authority that each subdivision has to provide benefits to its employees. A board of library trustees is thus empowered to provide health benefits within the restrictions imposed by R.C. 33745.40(L).

R.C. 3375.40(L) does not mention full-time or part-time employment and thus does not expressly authorize distinctions between the two. It neither expressly requires nor expressly prohibits distinctions in health care benefits based upon the number of hours a person works. R.C. 3375.40(L) does, however, permit the board of library trustees to elect to pay all or part of the cost of any combination of group insurance or coverage "covering its employees." *Cf.* R.C. 305.171 (similar authority granted to boards of county commissioners).

Pursuant to its authority to hire employees, fix their compensation, and provide health care benefits as authorized in R.C. 3375.40(L), a board of library trustees has discretion to make reasonable distinctions among groups of employees that are similarly situated. *See, e.g.,* 1984 Op. Att'y Gen. No. 84-086, at 2-295 (modified on other grounds by 1990 Op. Att'y Gen. No. 90-064) (subject to statutory limitations on granting fringe benefits, "a public employer may make distinctions among groups of employees, provided that such distinctions are reasonable, so that state and federal equal protection requirements are satisfied" (citations omitted)); 1983 Op. Att'y Gen. No. 83-098; 1981 Op. Att'y Gen. No. 81-082; 1981 Op. Att'y Gen. No. 81-062; 1980 Op. Att'y Gen. No. 80-030; 1978 Op. Att'y Gen. No. 78-057. In granting fringe benefits to its employees, a board of library trustees thus may distinguish among its employees on the basis of number of hours worked, provided that the distinctions made are reasonable and in compliance with constitutional standards.[5]

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[5] A prior Attorney General found that boards of township trustees were not authorized to distinguish between full-time employees and part-time employees in the provision of health care benefits because the statute authorizing the procurement of such benefits required that there be "uniform coverage." 1984 Op. Att'y Gen. No. 84-086 (modified by 1990 Op. Att'y Gen. No. 90-064 on the basis of legislative changes). The statute has since been amended to grant a township the option of excluding part-time township employees from health care coverage. *See* R.C. 505.60; 1998 Op. Att'y Gen. No. 98-019; 1992 Op. Att'y Gen. No. 92-068; 1990 Op. Att'y Gen. No. 90-064, at 2-271 n.2. In contrast, R.C. 3375.40(L) does not require that coverage be "uniform." Accordingly, in granting fringe benefits to its employees, a board of library trustees

With respect to the provision of fringe benefits for public employees, various distinctions have been based upon the number of hours worked. For example, it has been concluded that the board of education of a joint vocational district is authorized to "classify its teachers as either full-time or part-time employees for purposes of determining the fringe benefits which will be granted to such teachers, so long as such classification does not reduce any minimum benefit or status conferred upon such teachers by statute or otherwise." 1983 Op. Att'y Gen. No. 83-098 (syllabus); s*ee also, e.g.,* R.C. 124.136 (granting eligibility for parental leave of absence and parental leave benefits to permanent full-time and permanent part-time employees paid in accordance with R.C. 124.152 and to employees listed in R.C. 124.14(B)(2) or (4) who work thirty or more hours per week); R.C. 505.60. Thus, there is no general public policy that would preclude the board of library trustees of a county library district from electing to provide health benefits only to employees who work a certain minimum number of hours per week.

Subject to statutory limitations and to the constitutional standards governing permissible distinctions among groups of employees, Ohio law thus allows distinctions to be drawn among the employees of a county district library in the granting of health care benefits. We conclude, accordingly, that the board of library trustees of a county library district may require that its employees work a minimum number of hours per week in order to be eligible to receive health care benefits through the library, provided that the requirement is reasonable and in compliance with constitutional standards.

Therefore, it is my opinion and you are advised as follows:

1. A county library district is a political subdivision for purposes of R.C. 9.833. As such, the district may obtain health care benefits for its employees by becoming a self-insurer or partial self-insurer, in accordance with R.C. 9.833 and Auditor of State Bulletin 2001-005. (1993 Op. Att'y Gen. No. 93-031, syllabus, paragraph 2, approved and followed.)

2. Pursuant to R.C. 9.833, a county and a county library district may each establish an individual self-insurance program for health care benefits and agree to have their programs jointly administered, or may agree to establish and maintain a joint self-insurance program for health care benefits.

3. The board of library trustees of a county library district may require that its employees work a minimum number of hours per week in order to be

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is permitted to draw reasonable distinctions among groups of employees that are similarly situated. *See, e.g.,* 1981 Op. Att'y Gen. No. 81-082; 1980 Op. Att'y Gen. No. 80-030.

eligible to receive health care benefits through the library, provided that the requirement is reasonable and in compliance with constitutional standards.

Respectfully,

BETTY D. MONTGOMERY
Attorney General