May 16, 2000

OPINION NO. 2000-029

The Honorable David P. Joyce
Geauga County Prosecuting Attorney
Courthouse Annex
231 Main Street
Chardon, Ohio 44024

Dear Prosecutor Joyce:

You have submitted an opinion request in which you ask whether a board of township trustees has authority to procure and pay for long-term care insurance benefits for township officers and employees. As stated in your letter, a board of township trustees is a creature of statute with only those powers conferred upon it by the General Assembly. *See Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875). Whether a board of township trustees may purchase long-term care insurance for its officers and employees thus depends upon whether it has been granted such power by statute.

You question whether R.C. 505.60 authorizes a board of township trustees to purchase long-term care insurance for township officers and employees. Pursuant to R.C. 505.60(A), a board of township trustees "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." The remainder of R.C. 505.60 concerns the manner in which a township that chooses to provide such benefits must do so.

The purchase of long-term care insurance by political subdivisions, however, is governed by R.C. 124.841, which states in pertinent part:

> (B) Any political subdivision may negotiate with and may contract with one or more insurance companies or health insuring corporations authorized to operate or do business in this state for the purchase of a policy of long-term care insurance[1]

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[1] Pursuant to R.C. 124.841(A)(1), the term "[l]ong-term care insurance" has the meaning set forth in R.C. 3923.41, which states in pertinent part:

covering all elected officials and employees of the political subdivision. The contract may be entered into without competitive bidding. Any elected official or employee of a political subdivision may elect to participate in any long-term care insurance policy that the political subdivision purchases under this division and any official or employee who does so shall be responsible for paying the entire premium charged, which shall be deducted from the official's or employee's salary or wage and be remitted directly to the insurance company or health insuring corporation.

(C) Any long-term care insurance policy entered into under this section is subject to [R.C. 124.84(C)].[2] (Footnotes added.)

(A) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than one year for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" includes group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care benefits, and policies or riders that provide for payment of benefits based on cognitive impairment or the loss of functional capacity. "Long-term care insurance" includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, or health insuring corporations. "Long-term care insurance" does not include any insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

With regard to life insurance, "long-term care insurance" does not include life insurance policies that accelerate the death benefits specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement; that provide the option of a lump sum payment for those benefits; and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

Notwithstanding any other provision contained in [R.C. 3923.41-.48], *any product advertised, marketed, or offered as long-term care insurance shall be subject to [R.C. 3923.41-.48]*. (Emphasis added.)

[2] R.C. 124.84(C) states:

Pursuant to R.C. 124.841(A)(2), the term "political subdivision," as used in R.C. 124.841, has the meaning prescribed by R.C. 9.833,[3] and, therefore, includes townships. In accordance with R.C. 124.841(B), therefore, a township may negotiate and contract with one of the entities described therein "for the purchase of a policy of long-term care insurance covering all elected officials and employees" of the township. Moreover, in entering into a contract for the purchase of such a long-term care insurance policy, a township need not engage in competitive bidding. R.C. 124.841(B).

Pursuant to R.C. 124.841(B), any elected township officer or township employee is eligible to participate in the long-term care insurance policy purchased by the township. In order to so participate, however, a township officer or employee "shall be responsible for paying the entire

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> Any long-term care insurance policy purchased under this section or [R.C. 124.841 or R.C. 145.581] shall provide for all of the following with respect to the premiums charged for the policy:
>
> (1) They shall be set at the entry age of the official or employee when first covered by the policy and shall not increase except as a class during coverage under the policy.
>
> (2) They shall be based on the class of all officials or employees covered by the policy.
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> (3) They shall continue, pursuant to [R.C. 145.581], after the retirement of the official or employee who is covered under the policy, at the rate in effect on the date of the official's or employee's retirement.

[3] R.C. 9.833(A) states, "[a]s used in this section, 'political subdivision' means 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." (Emphasis added.)

premium charged, which shall be deducted from the official's or employee's salary or wage and be remitted directly to the insurance company or health insuring corporation" from which the policy was purchased. *Id*.

Based upon the foregoing, it is my opinion, and you are advised that, in accordance with R.C. 124.841, a township may purchase a contract of long-term care insurance, as defined in R.C. 3923.41, in which any elected officer or employee of the township may participate. Pursuant to R.C. 124.841(B), any township officer or employee who elects to participate in the township's long-term care insurance policy "shall be responsible for paying the entire premium charged, which shall be deducted from the official's or employee's salary or wage and be remitted directly to the insurance company or health insuring corporation" from which the policy was purchased.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

May 16, 2000

The Honorable David P. Joyce
Geauga County Prosecuting Attorney
Courthouse Annex
231 Main Street
Chardon, Ohio 44024

SYLLABUS: 2000-029

In accordance with R.C. 124.841, a township may purchase a contract of long-term care insurance, as defined in R.C. 3923.41, in which any elected officer or employee of the township may participate. Pursuant to R.C. 124.841(B), any township officer or employee who elects to participate in the township's long-term care insurance policy "shall be responsible for paying the entire premium charged, which shall be deducted from the official's or employee's salary or wage and be remitted directly to the insurance company or health insuring corporation" from which the policy was purchased.