

September 7, 2012

The Honorable Joseph R. Burkard
Paulding County Prosecuting Attorney
112 ½ Water Street
Paulding, Ohio 45879

SYLLABUS:

2012-027

R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2012-027

The Honorable Joseph R. Burkard
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112 ½ Water Street
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Dear Prosecutor Burkard:

You have requested an opinion whether R.C. 505.60(D) permits a township to reimburse a township officer or employee for an immediate dependent's health care plan. For the reasons that follow, it is our opinion that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.¹

We begin with the principle that, in order to perform the duties imposed upon them, township trustees may exercise only those powers conferred by statute or implied by those expressly granted.² *In re Vill. of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994) (recognizing the "well-settled principle that township trustees can exercise only those powers granted by the General Assembly"); *Trs. of New London Twp. v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Trs. of*

¹ This opinion concerns the operation of R.C. 505.60. R.C. 505.60 authorizes a board of township trustees to procure and pay for health care insurance coverage for its officers and employees. If a township chooses not to procure health care insurance coverage pursuant to R.C. 505.60, the township may, pursuant to R.C. 505.601, elect to reimburse its officers and employees for health care insurance coverage they otherwise obtain for themselves and their immediate dependents. R.C. 505.601.

R.C. 505.60 operates separately from R.C. 505.601, and the two statutes are mutually exclusive. 2005 Op. Att'y Gen. No. 2005-038, at 2-400 n.3. Thus, because Paulding Township operates under R.C. 505.60 by providing health care coverage options to its officers and employees, the township may not operate pursuant to R.C. 505.601.

² R.C. Chapter 504 authorizes townships to adopt a limited home rule government. There are no townships in Paulding County that have adopted the limited home rule government, and thus this opinion does not consider the powers of the elected officers of townships that have adopted a limited home rule government. *See, e.g.*, R.C. 504.04; 2007 Op. Att'y Gen. No. 2007-036, at 2-373 nn.9-10.

Brown Twp., 13 Ohio St. 311, 324-25 (1862); *see also State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916) (“[t]he [statutory] authority [of a statutorily created board] to act in financial transactions must be clear and distinctly granted”); 1988 Op. Att’y Gen. No. 88-088 (syllabus, paragraph 4) (“[a] board of township trustees may disburse township funds only by clear authority of law”). In sum, township officers may not exercise a power or undertake an activity, particularly with regard to township finances, absent express or implied statutory authority to do so. 2009 Op. Att’y Gen. No. 2009-034, at 2-237.

A board of township trustees is authorized to provide health care insurance coverage to its officers and employees and their immediate dependents pursuant to R.C. 505.60:

(A) As provided in this section and [R.C. 505.601], 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 procures any insurance policies under this section, 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.

(B) The board may also provide coverage for any or all of the benefits described in division (A) of this section by entering into a contract for group health care services with health insuring corporations holding certificates of authority under [R.C. Chapter 1751] *for township officers and employees and their immediate dependents*. 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*, from the funds or budgets from which the officers or employees are compensated for services, and may provide coverage under such contracts *for part-time township employees and their immediate dependents*, from the funds or budgets from which the officers or employees are compensated for services....

....

(D) If any township officer or employee is denied coverage under a health care plan procured under this section or if any township officer or employee elects not to participate in the township’s health care plan, *the township may reimburse the officer or employee* for each out-of-pocket premium *attributable to the coverage provided for the officer or employee* for insurance benefits described in division (A) of this section that the *officer or employee* otherwise obtains, but not to exceed an amount equal to the average premium paid by the township *for its officers and*

employees under any health care plan it procures under this section. (Emphasis added.)

As noted in your letter and italicized above, divisions (A) and (B) of R.C. 505.60 explicitly include the phrase “and their immediate dependents” in reference to township officers and employees. The inclusion of that phrase requires uniform coverage for immediate dependents when health care insurance coverage for officers and employees is provided.

When a township officer or employee is not covered by a township health care plan, either because the person is denied coverage or the person elects not to participate in the township’s health care plan, R.C. 505.60(D) authorizes the township to reimburse the officer or employee for coverage otherwise obtained. However, the General Assembly has not included the phrase “and their immediate dependents” in division (D) of R.C. 505.60. Therefore, there is no authorization for the board of township trustees to reimburse an officer or employee for health care coverage that is otherwise obtained for the officer or employee’s immediate dependents. *See* 1990 Op. Att’y Gen. No. 90-064, at 2-271 (“[c]oncerning the authority of the board of township trustees under R.C. 505.60, prior opinions have consistently concluded that R.C. 505.60 allows the board to provide insurance for its officers and employees only in the manner specified in the statute.... *See, e.g.,* 1989 Op. Att’y Gen. No. 89-009; 1984 Op. Att’y Gen. No. 84-086; 1982 Op. Att’y Gen. No. 82-076”).

We thus conclude that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee’s immediate dependents that the officer or employee obtains other than from the township. We understand that this conclusion may result in a certain inequity in some situations. For example, when a township, acting pursuant to R.C. 505.60(A), procures and pays for the health care insurance coverage of its officers, employees, and their dependents, and a township officer or employee either is denied coverage or elects not to participate in the township’s health care plan, that officer or employee may be reimbursed only for the coverage he otherwise obtains for himself and not for coverage he obtains for his dependents.

The Attorney General considered a prior version of R.C. 505.60 in 2005 Op. Att’y Gen. No. 2005-038. In that opinion, the Attorney General acknowledged that it is the “common practice of both public and private employers, when providing health care coverage for an employee, to offer coverage to the employee’s spouse and family as well,” and “[b]y authorizing townships to reimburse their officers and employees for out-of-pocket expenses for health care coverage obtained other than through the township, the General Assembly clearly intended to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel” because “[a]s a general rule, coverage of a couple or family under a single health care plan is more economical than covering each individual separately.” 2005 Op. Att’y Gen. No. 2005-038, at 2-401. Notwithstanding these laudable policy considerations, 2005 Op. Att’y Gen. No. 2005-038 (syllabus, paragraph 1) concluded that

a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium *attributable to that officer or employee* for health care

coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60[(A)], or if the officer or employee elects not to participate in the township's health care plan. (Emphasis added.)

We again are reticent to find authority for the township trustees to act where no authority is expressly granted by the statute. The authority for a board of township trustees to act—especially in matters concerning township finances—must be clearly granted. Here that clear grant of authority does not exist. Rather, the General Assembly plainly has included “immediate dependents” elsewhere in the same section as well as in the comparable provisions of R.C. 505.601, but it has not included “immediate dependents” in the language of R.C. 505.60(D) authorizing reimbursement to a township officer or employee.

Had the General Assembly intended to include immediate dependents in the authorization granted by R.C. 505.60(D), it could have done so by inserting the same phrase—“and their immediate dependents”—used in R.C. 505.60(A), R.C. 505.60(B), and R.C. 505.601. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, “it would not have been difficult to find language which would express that purpose,” having used that language in other matters); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

To the extent that a different result may be desirable, the remedy lies with the General Assembly. 2004 Op. Att’y Gen. No. 2004-035, at 2-321; 1983 Op. Att’y Gen. No. 83-034, at 2-131. *See also Bd. of Educ. v. Fulton County Budget Comm’n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975) (“[t]he remedy desired by appellants ... must be obtained from the source of their problem—the General Assembly” (footnote omitted)); *State ex rel. Nimberger v. Bushnell*, 95 Ohio St. 203, 116 N.E. 464 (1917) (syllabus, paragraph 4) (“[w]hen the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment”).

On the basis of the foregoing, it is my opinion, and you are hereby advised that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General