

OPINION NO. 2003-026**Syllabus:**

1. In procuring group life insurance to insure the lives of officers and full-time employees of a township pursuant to R.C. 505.602, the board of township trustees may participate in a joint arrangement with other political subdivisions.
2. In procuring group life insurance to insure the lives of county officers and employees and their immediate dependents pursuant to R.C. 305.171, the board of county commissioners may participate in a joint arrangement with other political subdivisions.

To: Jeffrey H. Manning, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Jim Petro, Attorney General, August 7, 2003

We have received your request for an opinion concerning the authority of a township to provide group life insurance for township officers and employees. You have asked: "Is a township board of trustees, pursuant to R.C. 505.602, or any other statute, authorized to participate with another political subdivision, such as a county, in a joint program to provide group life insurance for officers and employees?"

You have informed us that the Board of Commissioners of Lorain County provides group life insurance for its employees. Several townships in the county also wish to provide group life insurance. Expansion of the pool of participants in a group life insurance program generally reduces the cost of participation. Therefore, it would be beneficial for all the entities if the county and townships could join in the same program. To answer your question, we consider first the authority of a township to enter into a joint arrangement to procure group life insurance and then the authority of a county to enter into such an arrangement.

Pursuant to R.C. Chapter 504, a township is authorized to adopt a limited home rule government, which permits the township to exercise increased authority over certain matters. *See, e.g.*, R.C. 504.04; 2002 Op. Att'y Gen. No. 2002-032. Because your questions do not specifically address limited home rule townships, this opinion does not discuss those townships. Rather, as used in this opinion, the term "township" means only a township that has not adopted a limited home rule form of government. Further, your question does not ask about insurance benefits granted pursuant to collective bargaining agreements under R.C. Chapter 4117, and this opinion does not address those benefits. *See, e.g.*, R.C. 124.81(F) (collective bargaining agreement may provide fringe benefits, including group life insurance, through a jointly administered trust fund); R.C. 4117.08(A) ("[a]ll matters pertaining to wages, hours, or terms and other conditions of employment ... are subject to collective bargaining between the public employer and the exclusive representative," with limited exceptions not including group life insurance benefits); R.C. 4117.10; 2002 Op. Att'y Gen. No. 2002-034, at 2221 n.3; 1989 Op. Att'y Gen. No. 89-00 9, at 2-34 n.1; 1984 Op. Att'y Gen.

No. 84-086, at 2-297 n.4 (modified in other respects by 1990 Op. Att'y Gen. No. 90-064 on the basis of legislative change).

Authority of a township to compensate its officers and employees and to provide fringe benefits

We note, initially, that townships are political subdivisions of the state, having only the powers that they are expressly granted by law and those that are implied as necessary to carry out the express powers. *See, e.g.*, Ohio Const. art. X, §§ 1 and 2; R.C. 503.01; *In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994) (referring to “the well-settled principle that township trustees can exercise only those powers granted by the General Assembly”); *State ex rel. Shramm v. Ayres*, 158 Ohio St. 30, 33, 106 N.E.2d 630 (1952) (“the question is not whether townships are prohibited from exercising such authority. Rather it is whether townships have such authority conferred on them by law”); *Hopple v. Trs. of Brown Township*, 13 Ohio St. 311, 324-25 (1862); 2003 Op. Att'y Gen. No. 2003-017. Like other public bodies, townships are subject to the general principle that the authority to act in financial transactions must be clearly and distinctly granted, and any doubt as to the authority to expend public funds must be resolved against the expenditure. *See, e.g.*, *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); 1988 Op. Att'y Gen. No. 88-088 (syllabus, paragraph 4). Therefore, a township may join with a county or other political subdivision to procure group life insurance only if there is statutory authority, either express or implied, for the township to take that action.

Under Ohio law, the expenditure of public funds to provide insurance benefits to a public officer or employee constitutes the provision of a fringe benefit that is part of the compensation of the officer or employee. Persons whose compensation is set by statute may receive only the compensation that is authorized by statute, including the fringe benefits that are authorized by statute. Persons who are employed by an appointing authority with power to hire and fix compensation may receive such compensation as the appointing authority establishes; however, the appointing authority is subject to any provisions of law that restrict its authority to grant particular fringe benefits. *See, e.g.*, *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); 2002 Op. Att'y Gen. No. 2002-034; 2001 Op. Att'y Gen. No. 2001-025; 1989 Op. Att'y Gen. No. 89-009. Public officers are subject to the provisions of Ohio Const. art. II, § 20 that prohibit a change in an officer's compensation during an existing term of office. *See, e.g.*, 2001 Op. Att'y Gen. No. 2001-025; 2000 Op. Att'y Gen. No. 2000-043; 1992 Op. Att'y Gen. No. 92-031.

Authority of a township to provide group life insurance for township officers and employees through participation in a joint arrangement

Specific statutory provisions address the authority of a township to provide group life insurance for its officers and employees. In this regard, R.C. 505.602 states:

A board of township trustees may procure and pay all or any part of the cost of group life insurance to insure the lives of officers and full-time employees of the township. The amount of group life insurance coverage provided by the board to insure the lives of officers of the township shall not exceed fifty thousand dollars per officer.

R.C. 505.602 thus authorizes a board of township trustees to provide group life insurance to insure the lives of the officers and full-time employees of the township. At the same time, R.C. 505.602 restricts the board of township trustees, so that if the board chooses to provide group life insurance, it must provide that insurance in accordance with the provisions of R.C. 505.602. *See generally* 1998 Op. Att’y Gen. No. 98-019, at 2-100; 1992 Op. Att’y Gen. No. 92-068, at 2-283; 1990 Op. Att’y Gen. No. 90-064; 1989 Op. Att’y Gen. No. 89-009, at 2-35 to 2-37; 1984 Op. Att’y Gen. No. 84-086, at 2-296 (modified in other respects by 1990 Op. Att’y Gen. No. 90-064 on the basis of legislative change) (“[i]f a board of township trustees chooses, pursuant to R.C. 505.60, to provide any of the benefits described in that section, it must comply with the language of that section”); 1982 Op. Att’y Gen. No. 82-076.¹

R.C. 505.602 imposes the restrictions that the only type of life insurance the township may procure is group life insurance; the township may procure insurance for, and pay costs of, only coverage insuring the lives of officers and employees of the township; and the amount of coverage for each officer is limited to fifty thousand dollars. R.C. 505.602 does not otherwise restrict the manner in which a board of township trustees may procure group life insurance. Therefore, R.C. 505.602 does not prevent the board of township trustees from selecting any reasonable manner for procuring group life insurance, provided that the statutory restrictions are observed. *See, e.g., State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”); 1991 Op. Att’y Gen. No. 91-044; 1984 Op. Att’y Gen. No. 84-066, at 2-214 (authority to provide insurance implies authority to provide administrative services in connection with insurance coverage); 1981 Op. Att’y Gen. No. 81-082; 1981 Op. Att’y Gen. No. 81-069.

R.C. 505.602 does not expressly address the question whether a board of township trustees may participate with other political subdivisions in a joint arrangement to procure

¹Group life insurance is defined in R.C. 3917.01 and is subject to the provisions of R.C. Chapter 3917. *See* R.C. 3917.06 (“[e]xcept as provided in sections 3917.01 to 3917.06 of the Revised Code, no contract of life insurance shall be made covering a group in this state”); 1996 Op. Att’y Gen. No. 96-041, at 2-157 n.3; 1960 Op. Att’y Gen. No. 1091, p. 19. Therefore, the group life insurance coverage that a township is permitted to procure under R.C. 505.602 “must conform to, and is limited by, the terms of R.C. Chapter 3917.” 1996 Op. Att’y Gen. No. 96-041, at 2-157 n.3; *see also, e.g.,* R.C. 3917.01(B)(7) (including as a form of group life insurance “[l]ife insurance covering employees of a political subdivision or district of this state, ... or of any classes thereof, determined by conditions pertaining to employment”); R.C. 3917.03 (the employer, or the trustee of a trust fund, is the policyholder of a group life insurance policy); R.C. 3917.06 (form for policy of group life insurance must be approved by the Superintendent of Insurance); *Williams v. Cmty. Life Ins. Co.*, No. 1664, 1987 Ohio App. LEXIS 10449, at *4 (Scioto County Dec. 30, 1987) (“[p]olitical subdivisions of this state are authorized to procure group life insurance upon its [sic] employees pursuant to R.C. 3917.01”); 1955 Op. Att’y Gen. No. 5252, p. 240, at 243 (R.C. Chapter 3917 “spells out the particular groups which are insurable and the essential conditions which must be met by both the company and the insured before a valid contract of insurance may be issued”); note 3, *infra*.

group life insurance, and, therefore, does not restrict the board's authority in this regard. Further, although R.C. 505.602 describes the township officers and employees for whom the township might provide life insurance, it does not expressly define the extent of the group that might be insured and, therefore, does not preclude the township from participating in a larger group, as permitted by law. Therefore, R.C. 505.602 permits a board of township trustees to join with other political subdivisions to provide group life insurance, if the board deems that action appropriate.

We are aware that the statutes authorizing townships to provide group life insurance differ from the statutes authorizing townships to provide health care benefits. As noted in your letter, the health care benefit provisions appear in R.C. 9.833 and R.C. 505.60. R.C. 505.60 authorizes a board of township trustees to provide various types of health care benefits to township officers and employees and states expressly that the board "may also provide the benefits described in this section through an individual self-insurance program or a joint selfinsurance program" as provided in R.C. 9.833. R.C. 505.60(D). R.C. 9.833, in turn, prescribes the manner in which townships, counties, and other political subdivisions may establish individual or joint self-insurance programs for health care benefits. R.C. 9.833 also permits townships, counties, and other political subdivisions that provide health care benefits for their officers or employees to act pursuant to a written agreement to "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." R.C. 9.833(B)(4).

At one time, the authorization for a township to procure group life insurance was included in R.C. 505.60, along with the health care benefit provisions. The two types of benefits are currently addressed in separate provisions, however, with R.C. 505.602 containing the existing provisions governing the procurement of group life insurance for township officers and employees.² Therefore, in considering the nature and extent of a township's authority to procure group life insurance, we base our analysis on the provisions of R.C. 505.602. The fact that R.C. 9.833 expressly addresses joint arrangements for health care benefits while R.C. 505.602 does not expressly address joint arrangements for group life insurance benefits does not prevent us from construing R.C. 505.602 in accordance with its terms. Because R.C. 505.602 does not expressly limit the provision of group life insurance for the officers and full-time employees of a township to a group consisting of only those officers and employees, it permits the township to join with other political subdivisions to participate in a larger group, as permitted by law. *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370 (1948) ("the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute"); *Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm'n*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a different meaning, "it would not have been difficult to find language which would express that purpose"); 1996 Op. Att'y Gen. No. 96-041, at 2-158 ("[b]ecause the

²For a time the language now in R.C. 505.602, authorizing a board of township trustees to provide group life insurance for township officers and employees, appeared in R.C. 505.60. *See, e.g.*, 1977-1978 Ohio Laws, Part II, 2922 (Am. H.B. 551, eff. Oct. 9, 1978). The group life insurance language was moved from R.C. 505.60(B) to R.C. 505.602 in 1999 as part of a bill that made a variety of changes to township law, among them permitting townships to reimburse officers and employees for out-of-pocket health care premiums in certain circumstances. 1999-2000 Ohio Laws, Part I, 1213, 1238-39 (Am. Sub. H.B. 187, eff. Sept. 20, 1999); *see* R.C. 505.60(C); R.C. 505.601.

General Assembly did not further modify the phrase 'group life insurance' with the word 'term,' I cannot infer such limitation"); note 1, *supra*.³

There are certain limitations that apply to a township's authority to enter into a joint arrangement for group life insurance. Clearly, in entering into any joint arrangement, the township trustees are authorized by R.C. 505.602 to pay only the costs that are associated with providing group life insurance covering the officers and full-time employees of their township, and not to take on costs properly allocated to the procurement of group life insurance for officers and employees of another subdivision. *See* 1977 Op. Att'y Gen. No. 77-033. *See generally* 2003 Op. Att'y Gen. No. 2003-009. Further, the township may join only with other political subdivisions that are themselves authorized to procure group life insurance and are permitted to enter into a joint arrangement. In addition, the procurement of group life insurance is subject to such other requirements and restrictions as are imposed by law, including requirements and restrictions that govern the issuance of insurance policies. *See* note 1, *supra*. With these limitations in mind, we conclude that, in procuring group life insurance to insure the lives of officers and full-time employees of a township pursuant to R.C. 505.602, the board of township trustees may participate in a joint arrangement with other political subdivisions.

Authority of a county to provide group life insurance for township officers and employees through participation in a joint arrangement

You have asked specifically about the authority of a township to participate in a joint group life insurance program with a county. Clearly, joint action between a township and a county is permitted only if both the township and the county are authorized to undertake the action. Therefore, it is necessary for us to consider whether a county is authorized to procure group life insurance and join with other political subdivisions in such procurement. For purposes of this opinion, we consider the authority of counties that operate pursuant to statutory provisions, and we do not address the powers of counties that have adopted charters or alternative forms of government. *See, e.g.*, Ohio Const. art. X, §§ 1, 3; R.C.

³The existence of authority for a township and county to act jointly to increase the number of persons insured was found in 1977 Op. Att'y Gen. No. 77-033, under language of R.C. 505.60 that authorized the purchase of hospitalization, surgical, major medical, or sickness and accident insurance. That opinion concluded, in the syllabus, that "[a] township may join with the county in negotiations with an insurance company in order to procure a plan encompassing all county and township employees." Because the word "group" had been deleted from the statutory language at issue, 1977 Op. Att'y Gen. No. 77-033 distinguished 1969 Op. Att'y Gen. No. 69-046, which had concluded that, when R.C. 505.60 authorized a township to acquire group health or sickness and accident insurance, "group" was used as an insurance term meaning the traditional employer-employee group consisting of the township's officers and employees, and joint action among political subdivision was not permitted. 1969 Op. Att'y Gen. No. 69-046, at 2-97 to 2-98; *see also* note 1, *supra*. A later opinion, 1984 Op. Att'y Gen. No. 84-086, at 2-298 n.5, found that 1969 Op. Att'y Gen. No. 69-046 was no longer accurate because of statutory changes, and 1990 Op. Att'y Gen. No. 90-064 reached the same conclusion about 1984 Op. Att'y Gen. No. 84-086. Interestingly, R.C. 505.60 had been amended in 1976 to authorize a board of township trustees to procure and pay for group life insurance to insure the lives of full-time township employees, *see* 1975-1976 Ohio Laws, Part I, 1501 (H.B. 80, eff. Apr. 28, 1976), but the 1977 opinion did not mention the life insurance language.

301.22; R.C. Chapter 302; 2001 Op. Att'y Gen. No. 2001-020; 1994 Op. Att'y Gen. No. 94-095; 1985 Op. Att'y Gen. No. 85-039.

Like boards of township trustees, boards of commissioners of counties that operate pursuant to statutory provisions have only the powers they are given by statute. *See, e.g., State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Further, they are limited in financial matters to authority that is clearly and distinctly granted. *State ex rel. Locher v. Menning*.

The authority for a county to procure group life insurance is derived from R.C. 305.171(A), which authorizes a board of county commissioners to "contract for, purchase, or otherwise procure and pay all or any part of the cost" of coverage for a variety of health care benefits, group legal services, or group life insurance "for county officers and employees and their immediate dependents from the funds or budgets from which the officers or employees are compensated for services, issued by an insurance company." Pursuant to R.C. 305.171(C) and (D), the various fringe benefits, including group life insurance, may be provided through a jointly administered health and welfare trust fund pursuant to a collective bargaining agreement. R.C. 305.171(E) specifies that the benefits described in divisions (A) to (D) may be provided through an individual or joint self-insurance program as provided in R.C. 9.833. As discussed above, however, R.C. 9.833, by its terms, applies only to health care benefits. Therefore, R.C. 305.171 cannot reasonably be read to authorize the procurement of group life insurance pursuant to the provisions of R.C. 9.833.

As noted above, R.C. 9.833 expressly authorizes joint programs for the procurement of health care benefits. No analogous statute expressly authorizes joint programs for the purchase of group life insurance. Like R.C. 505.602, however, R.C. 305.171 authorizes the procurement of group life insurance in language that permits participation in a joint program with other subdivisions.

In authorizing a board of county commissioners to procure group insurance policies that provide group life insurance for county officers and employees and their immediate dependents, R.C. 305.171 imposes certain restrictions, including restrictions upon the persons for whom the county may purchase insurance and the moneys that it may use. However, R.C. 305.171 does not expressly address the question whether a board of county commissioners may join with other political subdivisions to procure group life insurance and, accordingly, does not restrict a board of county commissioners from taking such action. Further, it does not expressly define the extent of the group that might be insured and, therefore, does not preclude the county from participating in a larger group, as permitted by law. Rather, R.C. 305.171(A) authorizes the county commissioners to "contract for, purchase, or otherwise procure" group life insurance, thereby indicating that procurement may be made in any reasonable manner that is consistent with statutory requirements, including through the use of joint arrangements. *See, e.g., State ex rel. Kahle v. Rupert; Jewett v. Valley Ry. Co.*; 1991 Op. Att'y Gen. No. 91-044; 1984 Op. Att'y Gen. No. 84-066; 1981 Op. Att'y Gen. No. 81-082; 1981 Op. Att'y Gen. No. 81-069.

Like a township, a county may, therefore, join with other political subdivisions to procure group life insurance, subject to the restrictions that it is authorized to pay only costs associated with its officers and employees, may join only with other subdivisions that have corresponding authority to procure group life insurance in this manner, and must comply with other applicable provisions of law, including provisions governing the issuance of group life insurance. We conclude, accordingly, that, in procuring group life insurance to insure the lives of county officers and employees and their immediate dependents pursuant

to R.C. 305.171, the board of county commissioners may participate in a joint arrangement with other political subdivisions.

Agreement under R.C. 307.15

R.C. 307.15 provides a statutory mechanism by which a township and county may join to procure group life insurance for their respective officers and employees. R.C. 307.15 expressly authorizes a board of county commissioners to enter into an agreement with the legislative authority of a township, or other named subdivision, under which the board of county commissioners undertakes "to exercise any power, perform any function, or render any service" on behalf of the subdivision that the subdivision may exercise, perform, or render. R.C. 307.15(A)(1). Under such an agreement and subject to any limitations it imposes, the board of county commissioners may exercise on behalf of a township the same powers that the township possesses with respect to the performance of a function or the rendering of a service, and "all powers necessary or incidental thereto, as amply as such powers are possessed and exercised" by the township. R.C. 307.15(A)(2).

This provision thus authorizes a county and township to agree to have the county undertake, on behalf of the township, insurance activities that the township is permitted to take. *See, e.g.*, 1995 Op. Att'y Gen. No. 95-004, at 2-18; 1991 Op. Att'y Gen. No. 91037, at 2-203 (if a board of township trustees "is empowered to perform a function or render a service, then a board of county commissioners may, pursuant to R.C. 307.15, enter into an agreement ... to perform that function or render that service"); 1991 Op. Att'y Gen. No. 91-012; 1988 Op. Att'y Gen. No. 88-039, at 2-194; 1987 Op. Att'y Gen. No. 87-014, at 2-90. Pursuant to R.C. 307.15, therefore, a county may agree to join with other political subdivisions, including townships, to procure group life insurance in an efficient and economical manner.

Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. In procuring group life insurance to insure the lives of officers and full-time employees of a township pursuant to R.C. 505.602, the board of township trustees may participate in a joint arrangement with other political subdivisions.
2. In procuring group life insurance to insure the lives of county officers and employees and their immediate dependents pursuant to R.C. 305.171, the board of county commissioners may participate in a joint arrangement with other political subdivisions.