



# G. GARY TYACK

## FRANKLIN COUNTY PROSECUTING ATTORNEY

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August 1, 2024

The Honorable Dave Yost  
Ohio Attorney General  
Opinions Section  
OpinionsRequest@OhioAttorneyGeneral.gov

**Sent via email**

Re: Opinion Request Regarding Elected Official Mid-Term Compensation Increase

Dear Honorable Attorney General Yost,

Pursuant to R.C. 109.14, I respectfully request a formal written opinion on behalf of my client, the County Administrator on behalf of the Franklin County Board of Commissioners, regarding the interpretation of Ohio Const., Art. II, § 20, concerning potential mid-term compensation increases for Elected Officials due to changes in insurance coverage while maintaining the same contribution.

The Franklin County Board of Commissioners sponsors the Franklin County Cooperative, a self-insured health insurance program available to all County Offices and Agencies for their employees and Elected Officials. At this time, and at all points in the recent past, the Franklin County Cooperative has administered one medical insurance plan. Each year, the County Benefits Department, together with a consultant sets a cost per covered employee (the "composite rate") and the employee pays 12% of the resulting coverage level cost and the employer 88% of that cost. The same formula is used for employees covering children and or a spouse.

Currently, Elected Officials are required to remain on the health care plan in effect when they take office, until the end of their term, regardless of whether the county changes the health care plan for all other employees. This process has traditionally been followed in an effort to avoid mid-term compensation increases. Here is an example of the impact of this process:

- Elected Official A was sworn in on January 4, 2021, with a term end date of January 5, 2025. Elected Official A is enrolled in the 2021 health plan and pays 2021 employee contributions. (This is the same health plan provided to, and employee contribution charged, to all non-Elected Official employees for the 2021 plan year.)
- The 2022 health plan was changed to increase an office visit copay from \$20 to \$25 and the employee contribution was increased. The 2021 health plan must be maintained as is and Elected Official A remains in the 2021 health plan and does not experience any changes made in 2022. Elected Official A also continues to pay the 2021 employee contribution.

(All non-Elected Official employees would move to the 2022 health plan and pay the 2022 employee contribution for the 2022 plan year.)

- The 2023 health plan was changed to add the family forming benefit and the employee contribution was increased. The 2021 health plan must continue to be maintained as is and Elected Official A remains in the 2021 health plan and does not experience any changes made in 2023. Elected Official A also continues to pay the 2021 employee contribution. (All non-Elected Official employees would move to the 2023 health plan and pay the 2023 employee contribution for the 2023 plan year.)
- Fast forward to 2025. If re-elected, Elected Official A will transition to the 2025 health plan and 2025 employee contribution and start the process all over again.

The County would like your opinion on the legality of allowing Officials to transition to new health care plans when they are opened to other employees. For the hypothetical Elected Official reference above, we would envision that same situation would proceed as follows under this proposed new process:

- Elected Official A was sworn in on January 4, 2021, with a term end date of January 5, 2025. Elected Official A is enrolled in the 2021 health plan and pays 2021 employee contributions. (This is the same health plan provided to and employee contribution charged to all non-Elected Official employees for the 2021 plan year.)
- The 2022 health plan was changed to increase an office visit copay from \$20 to \$25 and the employee contribution was increased. Elected Official A moves into the **2022** health plan and to the **2022** employee contribution along with all non-Elected Official employees for the 2022 plan year.
- The 2023 health plan was changed to add the family forming benefit and the employee contribution was increased. Elected Official A moves into the **2023** health plan and to the **2023** employee contribution along with all non-Elected Official employees for the 2023 plan year.
- Fast forward to 2025. If re-elected, Elected Official A will transition to the 2025 health plan and 2025 employee contribution and start the process all over again.

In each case, we would preserve the existing employee and employer contribution distribution (12% and 88% for an individual employee's coverage).

Implementing this change would significantly streamline health plan administration. Currently, due to the requirement to maintain existing health plans for Elected Officials, up to six variations of the health plan may be active concurrently. With the proposed adjustment, only one health plan would remain active. The proposed change would allow the County to be more nimble in the changes that are made to the plans. Currently, if the County wishes to make changes to health plans, they need to establish a new plan for Elected Officials both when the changes are made and again on January 1<sup>st</sup> of each year. The proposed change would eliminate this requirement.

I have researched this matter and found a 2005 decision indicating that a county officer's mid-term change in his level of coverage for health care benefits, which results in a mid-term

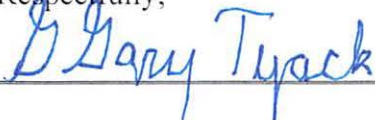
change in the number of dollars expended by the county on the officer's behalf and an increase in the benefits received by the officer, is not prohibited by Ohio Const. Art II, § 20, so long as such change was not due to a mid-term legislative change to the formula for calculating the officer's compensation. 2005 Ohio Atty.Gen.Op. No. 2005-031 at 2-328. I also found a 2011 Informal Ohio Ethics Commission Opinion (2011-INF-1216, attached) that suggested changes to a health plan such as the ones we contemplate do not constitute an in-term increase in compensation pursuant to Ohio Ethics laws.

The Board of Commissioners is the body which votes on matters related to the healthcare plan. I am attaching the most recent resolution related to the healthcare program. Although the healthcare plan is self-insured, the Board of Commissioners generally enters into three-year contracts with a plan administrator, and those contracts typically allow for one three-year extension which must also be voted on by the Board of Commissioners. As demonstrated by the attached resolution and contract, specifics related to the plan such as copays and covered services are not typically subject to a vote. These decisions are made by employees who ultimately report to the Commissioners, in conjunction with the Joint Benefits Committee composed of employees of covered entities and, labor union representatives. The Board of Commissioners does vote on certain coverage changes, in this case the addition of Precision Medicine, Doula Expenses, and Fertility/Maternity Solutions, however, these coverage changes did not result in a change to the costs of the program for the employee and the employer, which stayed the same in 2024 before and after the vote to add these services. Although these additions did not change the rates in 2024, they may have been factored in advance when Benefits and the consultant set the composite rate for 2024, or they may change the composite rate in 2025. These decisions would be made by Benefits at the recommendation of their consultant. The composite rate is recommended by the consultant based on projected costs for the entire complement of services offered by the health plan divided by the expected number of covered individuals. It can change year-to-year based on services offered and utilized as well as the makeup of plan participants.

Therefore, I seek your opinion on the following question: Would the plan we proposed, which would permit Elected Officials to transition to new health care plans while maintaining the same contribution distribution, constitute a mid-term compensation increase under Ohio Const., Art. II, § 20?

I trust that the information I have provided you is sufficient for you to render an opinion. Please contact me if you need any further information or if I can be of any assistance to you. Thank you for your attention on this matter.

Respectfully,



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**G. Gary Tyack**  
**Franklin County Prosecuting Attorney**