

OPINION NO. 81-069**Syllabus:**

By virtue of the express statutory grant in R.C. 305.171, a board of county commissioners may provide health and medical insurance to its employees pursuant to an insurance contract which obligates the board to pay claim costs up to a predetermined definite level and under which the insurance company assumes the indeterminable risks inherent in the employee coverage.

To: Andrew Hutyera, Harrison County Pros. Atty., Cadiz, Ohio
By: William J. Brown, Attorney General, November 16, 1981

I have before me your request for my opinion concerning the authority of a board of county commissioners to provide health and medical insurance to its employees. Specifically, your question is whether the board may provide such insurance pursuant to a plan under which the board itself pays employee health and medical claims up to a specified, cumulative amount and the insurance company pays those claims in excess of the specified amount.

In 1981 Op. Att'y Gen. No. 81-045, I opined that a board of education had the authority to provide insurance under just such a plan. The plan in question in that situation and the plan under consideration in the situation you have presented have the same characteristics. The policyholder contracts with the insurer, agreeing to

pay a premium and the cost of all claims to a maximum amount. In exchange for this consideration, the insurer handles the entire administration of the plan, guarantees the payment of all benefits described in the policy, and pays those claim costs which exceed the maximum amount. The policyholder is not involved in any way with the administration of the plan.

R.C. 305.171(A) specifically authorizes a board of county commissioners to obtain health and medical group insurance policies for the benefit of its employees. It states:

The board of county commissioners of any county may contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, or group life insurance, or a combination of any of the foregoing types of insurance or coverage for county officers and employees and their immediate dependents from the funds or budgets from which said officers or employees are compensated for services, issued by an insurance company, a hospital service association organized under Chapter 1739. of the Revised Code, a medical corporation organized under Chapter 1737. of the Revised Code, a dental care corporation organized under Chapter 1740. of the Revised Code, or a hospital service association in conjunction with an insurance company duly authorized to do business in this state. (Emphasis added.)

The concern is whether the plan described in your question comes within this statutory authority.

R.C. 305.171(A) expressly authorizes county commissioners to "contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies" which provide health and medical benefits. "Policy" is defined generally as a "document embodying a contract of insurance." Random House Dictionary of the English Language 113 (1973). The Supreme Court of Ohio has defined "insurance" as "a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay him or his nominee a certain or ascertainable sum of money on a specified contingency." State ex rel. Duffy v. Western Auto Supply Co., 134 Ohio St. 163, 168, 16 N.E.2d 256, 258-59 (1938) (quoting 32 Corpus Juris 975). As I stated in Op. No. 81-045, a minimum premium plan is clearly insurance:

The terms of the minimum premium plan are specifically set out in the contract of insurance entered into by the insurance company and the [policyholder]. . . . Although the [policyholder] is obligated under the contract to pay claim costs up to a specified and definite amount, the insurance company does in fact assume all actual indeterminable risks involved in the employee coverage offered under the plan by promising to pay all claims above the predetermined definite amount. Furthermore, since the insurance company guarantees the benefits under the proposed plan, the insurance company also assumes any ultimate risks inherent in the claim costs to which the [policyholder] is obligated under the plan.

R.C. 9.90¹ and R.C. 3313.202,² which go to the authority of boards of education to procure health insurance, employ somewhat different language than R.C. 305.171(A), which authorizes boards of county commissioners to obtain such insurance. This difference in statutory language has apparently created some question regarding whether the reasoning of Op. No. 81-045 carries over to a board of county commissioners. However, the essence of each of these statutes is to grant the power to contract for insurance. So long as the proposed plan is in fact insurance, each board has its particular statutory authority to contract for such a plan.

Under R.C. 305.171(A), quoted above, so long as the purchase of the insurance is from one of the entities specified in the statute and meets all requirements set out in the statute, the board of county commissioners is authorized to make such a purchase. The fact that one of the terms of the contemplated policy requires the policyholder to pay the cost of all claims to a maximum specified amount does not make it any less a policy of "group insurance" which the board of county commissioners is authorized to purchase under R.C. 305.171(A).

It is, therefore, my opinion, and you are hereby advised, that by virtue of the express statutory grant in R.C. 305.171, a board of county commissioners may provide health and medical insurance to its employees pursuant to an insurance contract which obligates the board to pay claim costs up to a predetermined definite level and under which the insurance company assumes the indeterminable risks inherent in the employee coverage.

¹R.C. 9.90 states:

(A) . . . [T]he board of education of any school district, may, in addition to all other powers in the Revised Code:

(1) Contract for, purchase, or otherwise procure from an insurer or insurers licensed to do business by the state of Ohio for or on behalf of such of its employees as it may determine, life insurance, or sickness, accident, annuity, endowment, health, medical, hospital, dental, or surgical coverage and benefits, or any combination thereof, by means of insurance plans or other types of coverage, family, group or otherwise, and may pay from funds under its control and available for such purpose all or any portion of the cost, premium, or charge therefor; (Emphasis added.)

²R.C. 3313.202 states:

The board of education of a school district may procure and pay all or part of the cost of group term life, hospitalization, surgical, or major medical insurance, or a combination of any of the foregoing types of insurance or coverage, whether issued by an insurance company or hospital service association duly licensed by this state, covering the teaching or non teaching employees of the school district, or a combination of both. . . . (Emphasis added.)