

OPINION NO. 2001-025**Syllabus:**

Ohio Const. art. II, § 20 does not prohibit a township trustee or clerk, who is holding office at the time the board of township trustees adopts a resolution to provide health insurance benefits to township officers and employees, from receiving such benefits if he pays the entire amount of the premiums from his own financial resources.

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Betty D. Montgomery, Attorney General, July 16, 2001

You have asked whether a township trustee or township clerk, who is holding office at the time the board of trustees first procures health insurance for township elected officials and employees, may receive such insurance coverage by paying the premiums himself, or whether coverage at the group rate is itself compensation that an officer is prohibited by Ohio Const. art. II, § 20 from receiving during his current term of office. Ohio Const. art. II, § 20 prohibits any change, whether an increase or decrease, in a public officer's salary or compensation during his term of office, and is applicable to township officers, including township trustees and clerks. *See State ex rel. Artmayer v. Board of Trustees*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975); 1977 Op. Att'y Gen. No. 77-083.

We turn first to R.C. 505.60(A), which authorizes a board of township trustees to "procure and pay all or any part of the cost of insurance policies" providing various types of health care benefits for township officers and employees. If the board does procure such insurance policies, it must "provide uniform coverage under these policies for township officers and full-time township employees and their immediate dependents." R.C. 505.60(B). *See generally* 1998 Op. Att'y Gen. No. 98-019; 1992 Op. Att'y Gen. No. 92-068. The cost is paid "from the funds or budgets from which the officers or employees are compensated for services," and the policies are to be issued "by an insurance company duly authorized to do business in this state." R.C. 505.60(B).

It is well established that insurance coverage provided to public officers and employees at the expense of the political subdivision they serve constitutes compensation for purposes of Ohio Const. art. II, § 20. In *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976), the court concluded that county officers, who were in office at the time the board of county commissioners authorized a health insurance plan and approved the payment of premiums, were precluded by Ohio Const. art. II, § 20 from having the county pay the premiums on their behalf during their term of office. *See also State ex rel. Artmayer v. Board of Trustees*. Thus, if a board of township trustees passes a resolution pursuant to R.C. 505.60 to expend township funds for the purchase of insurance for officers, employees, and their dependents, township trustees and clerks who are in office at the time the resolution is passed are prohibited from receiving such insurance coverage paid for by the township. *See also* 1992 Op. Att'y Gen. No. 92-068; 1992 Op. Att'y Gen. No. 92-031; 1978 Op. Att'y Gen. No. 78-054.

As the court made clear in *State ex rel. Parsons v. Ferguson*, however, it is the *expenditure of public funds* to pay for coverage under an insurance plan that causes such

coverage to be characterized as compensation to the public officer on whose behalf the coverage is purchased.¹ See also 1993 Op. Att'y Gen. No. 93-045 (where a county decreases the percentage of premiums paid by the county on behalf of county officers for insurance coverage, without any change in the amount of coverage provided, such a decrease may not be applied to in-term county officers); 1984 Op. Att'y Gen. No. 84-069 (where a county pays a higher portion of the county officers' health insurance premiums, an officer who is holding office at the time is prohibited by Ohio Const. art. II, § 20 from receiving such increase for the duration of his term, even though there was no increase in insurance coverage as a result of the county's action). In reliance on *State ex rel. Parsons v. Ferguson*, 1997 Op. Att'y Gen. No. 97-052 concluded that Ohio Const. art. II, § 20 did not preclude a member of the Ohio Water Development Authority, who was serving at the time members became entitled to health care benefits, from procuring such benefits with his own financial resources for the period remaining in his term. Similarly, 1975 Op. Att'y Gen. No. 75-061 found that where the amount and rate of coverage for life insurance purchased by the state for officers and employees increased, it would not be contrary to Ohio Const. art. II, § 20 for an in-term state elected official to receive the increased coverage by paying the premiums with his own financial resources.

In concluding that Ohio Const. art. II, § 20 is not violated where an in-term officer pays for newly authorized health benefits with his own resources, 1997 Op. Att'y Gen. No. 97-052 and 1975 Op. Att'y Gen. No. 75-061 implicitly rejected the position that the mere advantage of receiving insurance coverage at a group rate constitutes compensation for purposes of Ohio Const. art. II, § 20. This underlying premise is consistent with the holding of *State ex rel. Parsons v. Ferguson* that compensation is, for purposes of Ohio Const. art. II, § 20, the tangible benefit to an officer of having public funds expended on his behalf.

We must note, however, that 1983 Op. Att'y Gen. No. 83-011 could be construed as authority to the contrary. In that opinion, it was necessary to address, within a different context, whether the advantage to a school board member of purchasing at a group rate insurance provided by the school board to employees was compensation, and whether a school board member could purchase, with his own funds, insurance coverage at the group rate. At the time 1983 Op. Att'y Gen. No. 83-011 was rendered, boards of education had express statutory authority (under R.C. 9.90 and R.C. 3313.202) to procure and pay for insurance coverage only for *employees* of the board. While a board of education had the general authority under R.C. 3313.12 to provide for "compensation" of board members, it had no express authority to procure insurance coverage for them.²

¹In *Collins v. Ferguson*, No. 80AP-245, 1980 Ohio App. LEXIS 12570 (Franklin County July 22, 1980), however, the court of appeals limited the holding of *State ex rel. Parsons v. Ferguson* to the situation where a resolution granting officers insurance benefits is passed after the commencement of the officers' terms. The court declined to apply the holding of *Parsons* where benefits were being provided at the time an officer's term commenced, but the cost thereof increased mid-term, ruling that an increase in the cost of health insurance premiums paid by the county on behalf of a county official during his term of office does not violate Ohio Const. art. II, § 20 where there is no increase in the amount of health insurance benefits provided. See also 1989 Op. Att'y Gen. No. 89-003 (Ohio Const. art. II § 20 is not violated when a county pays for an increase in the premium cost of a group insurance policy for an elected county officer so long as the benefits are unchanged and the total percentage of the premium cost paid by the county remains the same).

²R.C. 3313.202 and R.C. 3313.12 were amended in 1985 to permit a member of a board of education to be included, at the member's option, under the group insurance coverage

In order to address the question of whether R.C. 3313.12 constituted implied authority for the board to procure insurance coverage for board members if the members paid for their own benefits, 1983 Op. Att'y Gen. No. 83-011 *assumed*, without analysis, that the mere advantage of participating at the group rate was compensation. The opinion found that, even if coverage at the group rate were compensation and board members paid for coverage from their personal resources, the board would, nonetheless, be unable to procure insurance for board members because R.C. 3313.202 and R.C. 9.90, authorizing the board to provide insurance for employees, acted as constricting authority on the board's ability to provide insurance benefits. The opinion concluded that the board had no statutory authority to procure the insurance coverage, as compensation or otherwise, for board members, regardless of who paid for the benefit. Because the opinion characterized group rate coverage as "compensation" only for purposes of refuting the argument that the board could procure insurance for board members as part of their compensation under R.C. 3313.12, and did not analyze or provide a definitive conclusion as to the nature of such advantage, we do not find it to be convincing authority for the conclusion that the opportunity to participate in an insurance plan at a group rate is, without more, compensation for purposes of Ohio Const. art. II, § 20.

In this instance, therefore, we conclude that Ohio Const. art. II, § 20 does not prohibit a township trustee or clerk, who is holding office at the time the board of township trustees adopts a resolution pursuant to R.C. 505.60 to provide health insurance benefits to township officers and employees, from receiving such benefits if he pays the entire amount of the premiums from his personal financial resources. The necessity for an in-term officer to purchase the insurance coverage with his own funds exists only for the duration of the term he was serving when the resolution was adopted, and if the officer is subsequently elected to a new term of office, Ohio Const. art. II, § 20 would not prohibit the use of township funds to pay the premiums for his insurance benefits.

Although you have asked only about the permissibility of a township officer's receipt of insurance coverage under Ohio Const. art. II, § 20, we must also address the statutory basis for such receipt in light of the examination of that issue in 1997 Op. Att'y Gen. No. 97-052. In the situation that was the subject of 1997 Op. Att'y Gen. No. 97-052, there was specific statutory language authorizing an in-term member of the Ohio Water Development Authority to pay for state-provided health care benefits with his own financial resources.³ Although there is no similar language in R.C. 505.60 expressly allowing township officers to pay for township-provided health insurance if they are precluded by Ohio Const. art. II, § 20

procured by the board for employees, so long as the member pays for his own coverage. 1985-1986 Ohio Laws, Part II, 3418 (Sub. H.B. 369, eff. Oct. 17, 1985).

³R.C. 6121.02 reads in part as follows:

Each appointed member of the authority shall receive an annual salary of five thousand dollars, payable in monthly installments, and is entitled to health care benefits comparable to those generally available to state officers and employees under section 124.82 of the Revised Code. If Section 20 of Article II, Ohio Constitution, prohibits the Ohio water development authority from paying all or a part of the cost of health care benefits on behalf of a member of the authority for the remainder of an existing term, the member may receive these benefits by paying their total cost from the member's own financial resources, including paying by means of deductions from the member's salary.

from receiving the benefits at township expense, such authority may be inferred from the language in R.C. 505.60 which authorizes a board of township trustees to "procure and pay all or any part of the cost of insurance policies."

The terms "procure" and "pay" are not synonymous, and the board's "procurement" of and "payment" for insurance coverage constitute distinct activities.⁴ See 1990 Op. Att'y Gen. No. 90-064 (a board of township trustees may procure health insurance covering township officers, employees, and their dependents, while paying only that portion of the premium attributable to the officer or employee). See also 1983 Op. Att'y Gen. No. 83-011 (analyzing the ability of a board of education to procure insurance coverage for board members separate and apart from the issue of payment for such coverage). Furthermore, R.C. 505.60 authorizes the board of township trustees to pay all or *any part* of the cost of coverage once procured. It is thus permissible for participating officers and employees to bear all or a part of the cost of insurance coverage secured by the board of township trustees under R.C. 505.60.⁵ See 1990 Op. Att'y Gen. No. 90-064. In this instance, R.C. 505.60 constitutes implied authority for an officer, who is precluded by Ohio Const. art. II, § 20 from receiving, in-term, insurance benefits secured and paid for by the township, to pay the cost of such benefits himself.⁶

R.C. 6121.02 was amended in 1997 to grant health care benefits to members of the Ohio Water Development Authority. 1997-1998 Ohio Laws, Part I, 909, 1916-17 (Am. Sub. H.B. 215, eff., in pertinent part, June 30, 1997). The language dealing with in-term members was included as part of that amendment. *Id.*

1975 Op. Att'y Gen. No. 75-061 also discussed possible statutory authority for in-term state elected officials to pay from their own funds the cost of group life insurance procured by the state. While not identifying express authority therefor, it cites a number of statutory provisions pertaining to public employees paying in whole or in part for group insurance benefits, and states that, "[i]t is this pervading trend throughout the code that permits" in-term state elected officers to purchase group life insurance with their own resources. *Id.* at 2-251.

⁴*Webster's New World Dictionary* 1133 (2nd college ed. 1984) defines "procure" as "to get or bring about by some effort; obtain; secure," and defines "pay" as "to give to (a person) what is due, as for goods received, services rendered, etc.; remunerate; recompense," *id.* at 1044.

⁵Any township officer or employee may, of course, decline to accept insurance benefits offered by a township if he does not like the terms upon which they are offered (or for any other reason). See R.C. 505.60(B) (a "township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers and employees").

⁶R.C. 505.60(B) does require that, if the board of township trustees procures insurance policies, it must provide uniform coverage under the policies for township officers, full-time employees, and their immediate dependents. It is the coverage, not the payments, which must be uniform, and thus, the payment of premiums by an in-term officer would not violate the uniform coverage requirement. See 1990 Op. Att'y Gen. No. 90-064 (if the township offers health insurance benefits under R.C. 505.60(A), it must make the same coverage which is available to township officers and full-time employees available to their immediate dependents, but the township may decide not to bear the cost of the dependents' coverage). *Id.* at 2-272. Cf. 1998 Op. Att'y Gen. No. 98-019 (under the "uniform coverage" requirement of R.C. 505.60, a township may not decide to pay the full cost of covering full-time employees

An examination of R.C. 505.60, in its entirety, and related statutory provisions⁷ evidences a clear intent by the General Assembly to grant townships a broad, flexible range of options under which to provide health care coverage for their officers and employees. The ability of an in-term township officer to pay for benefits under a group plan procured by the township comports with this intent while imposing no additional financial burden on the township.

It is, therefore, my opinion, and you are hereby advised, that Ohio Const. art. II, § 20 does not prohibit a township trustee or clerk, who is holding office at the time the board of township trustees adopts a resolution to provide health insurance benefits to township officers and employees, from receiving such benefits if he pays the entire amount of the premiums from his own financial resources.

and their dependents, but only part of the cost of the same coverage for township officers and their dependents).

⁷See R.C. 9.833 (authorizing townships and other political subdivisions to provide health care benefits for their officers and employees through an individual or joint self-insurance program); R.C. 505.601 (authorizing the board of township trustees to reimburse township officers and employees for out-of-pocket premiums where the township does not procure insurance policies as provided in R.C. 505.60(A)); R.C. 505.603 (authorizing a board of township trustees to offer benefits to officers and employees through a cafeteria plan that meets the requirements of the Internal Revenue Code). See also R.C. 505.60(B) (a board of township trustees may contract for group health care services with a health insuring corporation, but officers and employees must be permitted to choose between a plan offered by an insurance company and one offered by the health insuring corporation); R.C. 505.60(C) (if a township officer or employee is denied coverage under a health care plan procured under division (B) of R.C. 505.60, or if a township officer or employee elects not to participate in the township's health care plan, the township may reimburse the officer or employee for out-of-pocket premiums that he incurs for insurance policies described in division (A)); R.C. 505.60(D) (the board of trustees may provide benefits by contributing to a health and welfare trust fund administered through or with a collective bargaining representative of township employees or through an individual self-insurance program or a joint self-insurance program as provided in R.C. 9.833); R.C. 505.60(E) (if a township "fails to pay one or more premiums for a policy, contract, or plan of insurance or health care services authorized by division (A) or (B) of this section and the failure causes a lapse, cancellation, or other termination of coverage under the policy, contract, or plan, it may reimburse a township officer or employee for, or pay on behalf of the officer or employee, any expenses incurred that would have been covered under the policy, contract, or plan").