

**Note from the Attorney General's Office:**

1984 Op. Att'y Gen. No. 84-086 was modified by  
1990 Op. Att'y Gen. No. 90-064.

**OPINION NO. 84-086**

**Syllabus:**

If a board of township trustees chooses, pursuant to R.C. 505.60, to procure for its officers or employees any of the health insurance benefits described therein, the board must provide uniform coverage for all township officers and employees and their immediate

dependents; it may not distinguish between full-time employees and part-time employees, and it may not exclude the immediate dependents of township employees from coverage.

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**To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 21, 1984**

You have asked for an opinion interpreting the parameters within which a township must operate when providing hospital and medical insurance for its employees under R.C. 505.60. R.C. 505.60 states, in relevant part:

(A) 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, to provide uniform coverage for township officers and employees and their immediate dependents from the funds or budgets from which said officers or employees are compensated for services, whether issued by an insurance company, a hospital service association organized under Chapter 1739. of the Revised Code, medical care 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. Any 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.

The board may also contract for group insurance or health care services with health care corporations organized under Chapter 1738. of the Revised Code and health maintenance organizations organized under Chapter 1742. of the Revised Code, provided that each officer and employee is permitted to:

(1) Choose between a plan offered by an insurance company, hospital service association, medical care corporation, dental care corporation, or a hospital service association in conjunction with an insurance company and a plan offered by a health care corporation or health maintenance organization, and provided further that the officer or employee pays any amount by which the cost of the plan chosen by him exceeds the cost of the plan offered by the board under this section;

(2) Change his choice under division (A) of this section at a time each year as determined in advance by the board.

The board may provide the benefits authorized under this section, without competitive bidding, by contributing to a health and welfare trust fund administered through or in conjunction with a collective bargaining representative of the township employees. (Emphasis added.)

You have asked whether the language underlined above precludes the township from distinguishing between part-time and full-time employees in providing insurance coverage, and whether such language dictates that any policy procured thereunder must include the dependents of the township's employees.

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<sup>1</sup> R.C. 505.60 expressly provides that, "[a]ny 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." This opinion thus assumes that coverage will be provided only in those instances in which a particular officer or employee chooses to accept it.

Your letter of request states that your office has consistently interpreted R.C. 505.60 to mean that, if a board of township trustees chooses to provide hospital and medical insurance, the coverage must be uniform—that is, that it may not be extended to one group (e.g., trustees) to the exclusion of another group (e.g., township employees). Under this analysis, a distinction between part-time and full-time employees would not be permitted. You are, however, aware of recent applications of the case of Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980), which have concluded that, in the distribution of fringe benefits, different groups of employees may be treated differently as long as the benefits are distributed on a uniform basis to similarly situated employees, and you wonder whether such a theory may provide a board of township trustees with the option of procuring hospital and medical insurance for full-time employees but not for part-time employees.

Ebert v. Stark County Board of Mental Retardation stands, generally, for the proposition that a governmental body which has the power to employ and to fix the compensation of its employees may provide the employees with such fringe benefits as it chooses, with the qualification that it must comply with any statutes that set limits on, or minimum requirements for, particular fringe benefits. See generally 1984 Op. Att'y Gen. No. 84-071. 1981 Op. Att'y Gen. No. 81-052, at 2-202, outlined the procedure for applying this general rule to a particular public employer:

Once the requisite authority to compensate has been established, any statutory provisions pertinent to the provision of the particular fringe benefit in issue by the public employer to its employees must be identified. If the particular fringe benefit is not the subject of any statutory provisions applicable to the public employer or its employees, the fringe benefit in question is a permissible exercise of the public employer's authority to compensate its employees. On the other hand, if the particular fringe benefit is the subject of any statutory provision applicable to the public employer or its employees, further consideration is required. If an applicable statute constitutes a minimum statutory entitlement to a particular benefit, the public employer may, pursuant to its power to compensate and in the absence of any statute constricting its action in the particular case, choose to provide such benefit in excess of the minimum statutory entitlement. If an applicable statute limits the general authority of the public employer to compensate its employees with the particular fringe benefit in question, it must, of course, be viewed as a restriction upon the employer's authority to grant the particular benefit.

Where no statute addresses the provision of a particular fringe benefit by a public employer, the employer is free to provide the benefit as he sees fit. See 1983 Op. Att'y Gen. No. 83-060 (no statute limits the authority of a general health district to formulate a policy concerning the payment of unused sick leave to its employees at retirement). In such circumstances, a public employer may make distinctions among groups of employees, provided that such distinctions are reasonable, so that state and federal equal protection requirements are satisfied. See U.S. Const. amend. XIV; Ohio Const. art. I, §2; Kinney v. Kaiser Aluminum & Chemical Corp., 41 Ohio St. 2d 120, 322 N.E.2d 880 (1975) (under both state and federal law, equal protection requires the existence of reasonable grounds for making a distinction between those within and those outside a designated class); 1981 Op. Att'y Gen. No. 81-062 (since no statutory provisions constrict the authority of a community or technical college district to provide sick leave and vacation leave to its employees, such a district may adopt any policy it chooses, including a policy which distinguishes between full-time and part-time employees, provided that the policy is reasonable, so that it comports with equal protection requirements of U.S. Const. amend. XIV and Ohio Const. art. I, §2). Similarly, where a statute authorizes the provision of a particular benefit but does not require uniformity, reasonable distinctions may be drawn among groups of employees. See 1981 Op. Att'y Gen. No. 81-082 (employees of a county welfare department (now a county department of human services) may receive health insurance in excess of that granted to other county employees); 1980 Op. Att'y Gen. No. 80-030 (a county may provide different health and medical coverage for different groups of county employees); 1978 Op. Att'y Gen. No. 78-057 (where statute authorizes provision of

sick leave benefits but does not, either expressly or impliedly, require promulgation of a uniform policy for all offices, agencies, and departments, the policy need not be uniform; however, if distinctions are drawn, they must be reasonable to comport with the equal protection guarantees of U.S. Const. amend. XIV and Ohio Const. art. I, §2). See generally Op. No. 84-071; 1981 Op. Att'y Gen. No. 81-015.

In the situation you have presented, R.C. 505.60 expressly addresses the provision of hospital and medical insurance for township employees. It states that the board of township trustees may procure and pay the cost of insurance policies providing certain types of benefits, but adds that such policies are "to provide uniform coverage for township officers and employees and their immediate dependents." I believe that this language must be viewed as a restriction on the authority of a board of township trustees to procure health benefits. If 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. See 1982 Op. Att'y Gen. No. 82-076 at 2-211 (considering the Ebert case and concluding that R.C. 505.60 "must be seen as a restriction upon the authority of a board of township trustees to provide medical benefits to its employees"). See generally 1977 Op. Att'y Gen. No. 77-033. R.C. 505.60 does not permit distinctions to be drawn among groups of officers and employees, even if the persons within each group are similarly situated. Rather, the word "uniform" must be given its ordinary meaning: "consistent in action, intention, effect, etc. [a uniform policy]." Webster's New World Dictionary 1551 (2d college ed. 1978). See generally Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946). Every township officer and employee who receives health insurance benefits under R.C. 505.60 is entitled, under the language of that section, to receive benefits which are uniform with respect to those granted to every other officer and employee under that section.

I am aware that R.C. 505.60 authorizes the procurement of insurance "policies," that it authorizes the procurement of coverage from a number of different types of bodies, and that it authorizes the provision of benefits without competitive bidding in connection with collective bargaining. I am also aware that, in Op. No. 80-030, my predecessor considered such factors to be pertinent to his determination that a county may provide different health and medical coverage to different groups of county employees. Accord, Op. No. 81-082. I note, however, that R.C. 305.171, the statute under consideration in Op. No. 80-030, does not contain any requirement of uniformity of coverage.<sup>2</sup> I conclude, therefore,<sup>3</sup> that the analysis set forth in Op. No. 80-030 is not directly applicable to townships. See

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<sup>2</sup> R.C. 505.60 states, in part: "The board [of township trustees] may provide the benefits authorized under this section, without competitive bidding, by contributing to a health and welfare trust fund administered through or in conjunction with a collective bargaining representative of the township employees." The health insurance benefits authorized by that section consist of the uniform coverage mentioned in R.C. 505.60(A). R.C. 305.171, which authorizes counties to provide health insurance benefits, exempts from competitive bidding requirements benefits purchased under that section "when such benefits are provided through a jointly administered health and welfare trust fund in which the county or contracting authority and a collective bargaining representative of the county employees or contracting authority agree to participate." R.C. 305.171 contains no reference to uniformity of coverage.

<sup>3</sup> I note, as a practical matter, that a township does not have the large number of appointing authorities which a county has. See, e.g., R.C. 124.40 (board of township trustees determines compensation to be paid to members of the township civil service commission); R.C. 505.38 (board of township trustees provides for employment of firefighters and fixes their compensation); R.C. 507.021 (board of township trustees may employ persons to assist the township clerk or deputy clerk); R.C. 509.01 (board of township trustees may designate and compensate police constables); R.C. 511.10 (board of township trustees may appoint necessary employees and fix their compensation); 1983 Op. Att'y Gen. No. 83-073; 1981 Op. Att'y Gen. No. 81-061; Op. No. 81-015; Op. No. 80-030. See generally R.C. 4117.06.

generally R.C. Chapter 4117 (public employees collective bargaining).<sup>4</sup>

I am also aware that R.C. 505.60 states that the costs of insurance policies may be paid "from the funds or budgets from which said officers or employees are compensated for services." I find that this language indicates the source of funds to be used to provide the benefits for particular individuals, if benefits are to be provided, cf. Op. No. 81-082; 1978 Op. Att'y Gen. No. 78-029 (discussing fund or budget from which cost of medical insurance for county employees is to be paid),

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<sup>4</sup> Collective bargaining by public employees is now covered by R.C. Chapter 4117, enacted by Am. Sub. S.B. 133, 115th Gen. A. (1983) (eff. Oct. 6, 1983; certain provisions eff. April 1, 1984). R.C. 4117.01(B) defines "[p]ublic employer" to mean "the state or any political subdivision of the state located entirely within the state including, without limitation, any...county, township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census, . . . ." R.C. 4117.01(C) defines "[p]ublic employee" to include "any person holding a position by appointment or employment in the service of a public employer," with certain exceptions; among the exceptions are persons holding elective office (R.C. 4117.01(C)(1)), confidential employees (R.C. 4117.01(C)(6); see R.C. 4117.01(J)), management level employees (R.C. 4117.01(C)(7); see R.C. 4117.01(K)), employees of a public official who act in a fiduciary capacity, appointed pursuant to R.C. 124.11 (R.C. 4117.01(C)(9); see R.C. 124.11), supervisors (R.C. 4117.01(C)(10); see R.C. 4117.01(F)), and seasonal and casual employees (R.C. 4117.01(C)(13)). R.C. 4117.08 states that "[a]ll matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section"; health insurance coverage is not among the exceptions set forth in R.C. 4117.08. R.C. 4117.10 states, in part:

Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. Laws pertaining to civil rights, affirmative action, unemployment compensation, workers' compensation, the retirement of public employees, residency requirements, the minimum educational requirements contained in the Revised Code pertaining to public education including the requirement of a certificate by the fiscal officer of a school district pursuant to section 5705.41 of the Revised Code, and the minimum standards promulgated by the state board of education pursuant to division (D) of section 3301.07 of the Revised Code prevail over conflicting provisions of agreements between employee organizations and public employers. Except for sections 306.08 [county transit board], 306.12 [county transit board], 306.35 [regional transit authority], and 4981.22 [Ohio Rail Transportation Authority; repealed by Am. Sub. H.B. 100, 115th Gen. A. (1983) (eff. Feb. 24, 1983)] of the Revised Code and arrangements entered into thereunder, and section 4981.21 [Ohio Rail Transportation Authority; repealed by Am. Sub. H.B. 100, 115th Gen. A. (1983) (eff. Feb. 24, 1983)] of the Revised Code as necessary to comply with section 13(c) of the "Urban Mass Transportation Act of 1964," 87 Stat. 295, 49 U.S.C. 1609(c), as amended, and

but, in light of the express requirement of uniformity which appears in R.C. 505.60, I do not find that this language authorizes distinctions in coverage among persons compensated from various funds or budgets.

It might be suggested that, even within the concept of uniformity, a distinction may be made between full-time employees and part-time employees, since their situations are dissimilar in obvious respects. I note, however, that where the General Assembly intended that part-time employees not be included among those who receive a particular fringe benefit, it expressly mentioned only full-time employees. R.C. 505.60(B) authorizes the township trustees to procure group life insurance, "to insure the lives of officers and full-time employees of the township." The distinction between this language and that of R.C. 505.60(A) makes it clear that the general word "employees," as used in R.C. 505.60(A), must include both full-time and part-time employees. See generally Robert V. Clapp Co. v. Fox, 124 Ohio St. 331, 178 N.E. 586 (1931) (where the legislature has used two different words in a statute, it is presumed that different meanings were intended).

For the reasons set forth above, I conclude that, in providing hospital and medical insurance under R.C. 505.60, a board of township trustees may not distinguish between part-time and full-time employees. Cf. 1983 Op. Att'y Gen. No. 83-098 (discussing distinctions which the board of education of a joint vocational school district may make between part-time and full-time teachers in granting fringe benefits pursuant to the statutory scheme under which it operates). See generally Op. No. 81-061 (provision of certain fringe benefits, other than health insurance, by township trustees).

You have also asked whether the use of the word "and" in the language "to provide uniform coverage for township officers and employees and their immediate dependents" explicitly mandates the inclusion of township employees' immediate dependents in any insurance policy procured under R.C. 505.60(A). I agree with you that it does. The word "and" is defined as meaning "also; in addition; moreover; as well as." Webster's New World Dictionary 51 (2d college ed. 1978). The plain meaning of the language used in R.C. 505.60 is that, if health insurance is provided pursuant to that section, the coverage must be uniform as to all persons mentioned, including the immediate dependents of employees.<sup>5</sup>

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arrangements entered into thereunder, Chapter 4117. of the Revised Code prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in Chapter 4117. of the Revised Code or as otherwise specified by the general assembly. (Emphasis added.)

Thus, with certain exceptions, where a public employer acts pursuant to R.C. Chapter 4117 in entering into a collective bargaining agreement, the public employer is not limited by laws which are in conflict with R.C. Chapter 4117. You have not indicated that your question relates to benefits to be provided pursuant to agreements under R.C. 4117. I am, therefore, in this opinion, considering only the benefits which may be provided under R.C. 505.60.

<sup>5</sup> In 1969 Op. Att'y Gen. No. 69-046, one of my predecessors opined that, under R.C. 505.60 as then in effect, a board of township trustees had authority to purchase health insurance for township officers and employees and their immediate dependents on a group basis only, and that, if insurance was procured, the group to be insured consisted of those persons named in the statute--i.e., township officers and employees and their immediate dependents. R.C. 505.60 has since been amended; the word "group" has been deleted and the word "uniform" has been added. See 1969-1970 Ohio Laws, Book II, 1447 (Am. S.B. 522, eff. Sept. 14, 1970). Op. No. 69-046 is, therefore, no longer an accurate statement of the law. It appears, however, that the current version of R.C. 505.60 has retained the concept that, if insurance is procured, the persons to be covered are those named in the statute--i.e., township officers and employees and their immediate dependents.

It is true that R.C. 1.02(F) provides that "and" may be read "or" if the sense requires it. There is, however, no basis for changing the plain meaning of a word used in a statute when the literal meaning of the statute is a reasonable one. As the Ohio Supreme Court stated in In re Estate of Marrs, 158 Ohio St. 95, 99, 107 N.E.2d 148, 150-51 (1952): "the words ['and' and 'or'] should not be treated as interchangeable when their accurate and literal meaning does not render the sense dubious, and the fact that the terms of the legislative enactment when given their literal meaning may prove onerous in some instances is not sufficient to warrant a court in arbitrarily changing plain and unambiguous language employed by the legislative body in the enactment." I am aware of no rule of statutory construction which would permit the language about which you have inquired to be read as permitting the purchase of health insurance which does not cover the immediate dependents of employees. See generally Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948).

It is, therefore, my opinion, and you are hereby advised, that, if a board of township trustees chooses, pursuant to R.C. 505.60, to procure for its officers or employees any of the health insurance benefits described therein, the board must provide uniform coverage for all township officers and employees and their immediate dependents; it may not distinguish between full-time employees and part-time employees, and it may not exclude the immediate dependents of township employees from coverage.