

**OPINION NO. 84-069****Syllabus:**

Pursuant to Ohio Const. art. II, §20, a county elected officer who holds office when the board of county commissioners increases the amount paid by the county on behalf of county officers for the officers' health insurance premiums is not entitled to receive the increase for the duration of the term he was serving at the time the increase was implemented.

---

**To: James R. Livingston, Miami County Prosecuting Attorney, Troy, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, November 28, 1984**

I have before me your request for my opinion concerning the entitlement of various county elected officers to an increase in the amount paid by the county on behalf of county officers for the officers' health insurance premiums. Factually, I understand your question has arisen in the following context. The individuals involved are a county commissioner, the clerk of courts, the county engineer, the county auditor, and a former county prosecutor. After election or appointment of these officers to their respective offices and commencement of their respective terms, the county commissioners elected to increase the amount paid by the county for county officers' health insurance premiums from fifty percent of an officer's

premium to all but five dollars per month. There was no increase in insurance coverage as a result of this action. The question you present is whether this increase in payment constitutes a change in compensation of such elected officials for purposes of Ohio Const. art. II, §20.

Ohio Const. art. II, §20 governs increases in the compensation of public officers, and reads as follows: "The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished." This provision is applicable to elected county officers, including those at issue herein. See State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); State ex rel. DeChant v. Kelsner, 133 Ohio St. 429, 14 N.E.2d 350 (1938); 1984 Op. Att'y Gen. No. 84-058; 1981 Op. Att'y Gen. No. 81-099. Fringe benefits, such as health insurance,<sup>1</sup> are a form of compensation for purposes of art. II, §20 and thus, art. II, §20 prohibits a public officer subject to its terms from receiving an increase in fringe benefits during the course of his term. See State ex rel. Parsons v. Ferguson; Op. No. 84-058. See also State ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) (the terms "salary" and "compensation" are synonymous as used in art. II, §20). Thus, you question whether Ohio Const. art. II, §20 prohibits a county elected officer from receiving the increase in amount paid by the county for county officers' health insurance premiums for the course of his term during which the increase was implemented.

In 1981 Op. Att'y Gen. No. 81-099, my predecessor dealt with the situation where health insurance policies had been purchased for county and township officers prior to the date on which they were to take office. During the course of the officers' terms, the premium cost increased, although the coverage remained the same. Based on the case Collins v. Ferguson, No. 80AP-245 (Ct. App. Franklin County July 22, 1980), my predecessor concluded that, "[a]n increase in the cost of the insurance coverage furnished to elected township and county officers, without a corresponding increase in the extent of the insurance benefits, is not an in-term increase in compensation prohibited by Ohio Const. art. II, §20." (Syllabus.) The conclusions of Collins and Op. No. 81-099 were based on the fact that the officers were receiving no increased benefits during their terms, although there was an increased cost to the county.

The officers about whom you have asked, like the officers in Op. No. 81-099, have received no increase in coverage benefits, although there has been an increase in the cost to the county of providing health insurance benefits. In the situation you have presented, however, the officers are receiving an increase in benefits because the county is paying a larger portion of the officers' premiums. In reducing the amount the officers are required to contribute toward their insurance premiums, the county is, in effect, increasing the officers' net compensation, at an increased cost to the county.

The situation you have presented is analogous to a "pick up in lieu of salary increase" plan which was discussed in Op. No. 84-058 with regard to the contributions of county officers to the Public Employees Retirement System (PERS). In Op. No. 84-058, the question was raised whether county officers may participate in a plan whereby the county assumes and pays or picks up part or all of the officers' contributions to PERS when such contributions are otherwise the duty of the officers. I concluded that if such a plan were instituted during the officers' terms, Ohio Const. art. II, §20 would prohibit the officers from participating in the

---

<sup>1</sup> Pursuant to the terms of R.C. 305.171, "[t]he 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. . . for county officers and employees. . ." Health insurance benefits are thus a form of compensation which is specifically authorized by statute as available to the officeholders in question.

plan since such a plan constitutes a fringe benefit, and thus an increase in compensation.<sup>2</sup> See 1984 Op. Att'y Gen. No. 84-036; 1979 Op. Att'y Gen. No. 79-001; 1978 Op. Att'y Gen. No. 78-049.

The payment of a county officer's health insurance premiums, like the payment of an officer's retirement contribution, constitutes a fringe benefit to the officer. By assuming and paying a greater portion of an officer's health insurance premiums than that paid when the officer commenced his term, the county is extending a more valuable fringe benefit to the officer and is thus increasing the officer's compensation. Therefore, a county elected officer may not receive the increase until the term which he was serving at the time of the increase expires.

In conclusion, it is my opinion, and you are advised, that pursuant to Ohio Const. art. II, §20, a county elected officer who holds office when the board of county commissioners increases the amount paid by the county on behalf of county officers for the officers' health insurance premiums is not entitled to receive the increase for the duration of the term he was serving at the time the increase was implemented.

---

<sup>2</sup> In addition to the prohibition of Ohio Const. art. II, §20 against in-term increases in compensation, I concluded in 1984 Op. Att'y Gen. No. 84-058, that county officers may not participate in a pick up in lieu of salary increase plan since officers whose compensation is set by statute may not receive fringe benefits not provided by statute. See Ohio Const. art. II, §20; 1984 Op. Att'y Gen. No. 84-036; 1983 Op. Att'y Gen. No. 83-042.