

OPINION NO. 89-003**Syllabus:**

1. Pursuant to the authority of R.C. 305.171, the board of county commissioners of any county may contract, purchase or otherwise pay the cost of group insurance policies for elected county officers and their immediate dependents. The provision of such benefits may be a percentage of the entire premium cost with each officer obligated to pay the remainder.
2. The payment of an increase in the premium cost of a group insurance policy for an elected county officer and his immediate dependents does not violate the prohibition of Ohio Const. art. II, §20, against an in-term increase of compensation of county elected officers, provided that the benefits procured are unchanged, and the total percentage of the entire premium cost paid by the board of county commissioners remains the same.

To: Peter R. Seibel, Defiance County Prosecuting Attorney, Defiance, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 23, 1989

I have before me your request for my opinion regarding the application of the prohibition in the Ohio Constitution against a county elected officer receiving an increase in compensation during the officer's term of office. Specifically, your concern is whether a board of county commissioners may pick up the entire increase in the premium cost for health insurance benefits of an elected officer where the benefits remain unchanged. You have indicated that the county pays 60% of an elected officer's family health insurance premium. The premium was recently increased without a change in coverage. The salient question is whether the county may pick up the entire increased cost of the premium or must the county limit the amount it picks up according to the formula governing the county's share of the cost in effect at the start of the elected officer's term of office?

Ohio Const. art. II, §20, prohibits an in-term increase of compensation to elected officers by stating: "[t]he 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." Elected county officers are "officers" as the term is used

in Ohio Const. art. II, §20, and, thus, are subject to the prohibition against an in-term increase in compensation. 1987 Op. Att'y Gen. No. 87-021; 1984 Op. Att'y Gen. No. 84-069; 1984 Op. Att'y Gen. No. 84-058; 1981 Op. Att'y Gen. No. 81-099. See also *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). The general assembly has fixed the compensation of various elected county officers. See, e.g., R.C. 325.03 (salary of county auditor); R.C. 325.04 (salary of county treasurer); R.C. 325.06 (salary of sheriff); R.C. 325.08 (salary of clerk of the court of common pleas); 325.09 (salary of county recorder); R.C. 325.10 (salary of county commissioners); R.C. 325.11 (salary of prosecuting attorney); R.C. 325.14 (salary of county engineer); R.C. 325.15 (salary of county coroner). Pursuant to Ohio Const. art. X, §1, the general assembly may empower the board of county commissioners to fix the salary of a county officer. In such cases, the constitutional prohibition against the in-term increases in compensation does not apply. *Blacker v. Wiethe*, 16 Ohio St. 2d 65, 242 N.E.2d 655 (1968).

Fringe benefits,¹ such as health insurance, are a form of "compensation" as that term is used in Ohio Const. art. II, §20. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d at 391, 348 N.E.2d at 694; 1987 Op. Att'y Gen. No. 87-074; Op. No. 87-021; 1986 Op. Att'y Gen. No. 86-077; 1986 Op. Att'y Gen. No. 86-025; Op. No. 84-058; 1984 Op. Att'y Gen. No. 84-036. Public officers whose compensation is set by statute may not receive fringe benefits unless such benefits are specifically or impliedly authorized by law. Op. No. 84-058; Op. No. 84-036; 1983 Op. Att'y Gen. No. 83-042. The provision of group health insurance to county officers is a fringe benefit specifically authorized by the general assembly in R.C. 305.171(A), which 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 including, but not limited to 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, group legal services, 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 medical care corporation organized under Chapter 1737. of the Revised Code, or a dental care corporation organized under Chapter 1740. of the Revised Code. (Emphasis added.)

An in-term commencement of additional insurance benefits violates the constitutional prohibition of an in-term increase in compensation. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d at 391-392, 348 N.E.2d at 694; 1980 Op. Att'y Gen. No. 80-002 (*overruled in part by Op. No. 81-099*). Where a fringe benefit, paid in full by the employer, is instituted prior to the commencement of a public officer's term, the employer's payment of a subsequent increase in the cost of the same benefit during the officer's term is not considered increased or additional compensation. Op. No. 81-099. Where, however, the county pays a greater portion of the officer's insurance benefit, an in-term increase of compensation occurs. Op. 84-069. I concluded, in Op. No. 84-069, at 2-224, that a constitutional prohibition existed where a board of county commissioners, during an officer's term, increased the percentage of health insurance premium paid from county funds from fifty percent to nearly one hundred percent of the cost. I stated that:

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

¹ For a definition of "fringe benefits", see generally 1982 Op. Att'y Gen. No. 82-006 at 2-16 to 2-17 ("a fringe benefit is commonly understood to mean something that is provided at the expense of the employer and is intended to directly benefit the employee so as to induce him to continue his current employment").

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.

A factor-based approach to calculating an officer's salary was explicitly approved as not, per se, violating Ohio Const. art. II, §20, in *Schultz v. Garrett*, 6 Ohio St. 3d 132, 451 N.E.2d 794 (1983). The Ohio Supreme Court stated the general rule of law in the syllabus:

Where a statute setting forth the formula for the compensation of an officer is effective before the commencement of such officer's term, any salary increase which results from a change in one of the factors used by the statute to calculate the compensation is payable to the officer. Such increase is not in conflict with Section 20, Article II of the Constitution when paid to the officer while in term. (*State, ex rel. Edgecomb, v. Rosen*, 29 Ohio St. 2d 114, overruled.)

See also *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E.2d 840 (1942); 1988 Op. Att'y. Gen. No. 88-014 (an in-term salary increase resulting from the application of a statutory formula does not violate Ohio Const. art. II, §20).

Based on the authority of R.C. 305.171, a board of county commissioners may pay any part of the cost of a group health insurance policy for a county officer. R.C. 305.171 appears to grant discretion to a board of county commissioners to determine what portion of the cost the county should bear. Inasmuch as group health insurance benefits are compensation, which may be paid according to a formula, a board of county commissioners may pay for a percentage of the total cost of a group health insurance policy with the county officer responsible for paying the remaining percentage. Where the cost of the group health insurance policy increases during a county officer's term of office, the board of county commissioners may pay the increase for the continuation of the identical benefit provided that the total percentage of the premium cost paid by the board remains the same. If the board of county commissioners pays an increased percentage of the cost of the premium a prohibited in-term increase in compensation to the officer occurs.

It is, therefore, my opinion, and you are hereby advised, that:

1. Pursuant to the authority of R.C. 305.171, the board of county commissioners of any county may contract, purchase or otherwise pay the cost of group insurance policies for elected county officers and their immediate dependents. The provision of such benefits may be a percentage of the entire premium cost with each officer obligated to pay the remainder.
2. The payment of an increase in the premium cost of a group insurance policy for an elected county officer and his immediate dependents does not violate the prohibition of Ohio Const. art. II, §20, against an in-term increase of compensation of county elected officers, provided that the benefits procured are unchanged, and the total percentage of the entire premium cost paid by the board of county commissioners remains the same.