

Note from the Attorney General's Office:

1969 Op. Att'y Gen. No. 69-045 was clarified by
1975 Op. Att'y Gen. No. 75-084.

OPINION NO. 69-045**Syllabus:**

1. It is necessary to have competitive bidding, pursuant to Section 307.86, Revised Code, before entering into a group health insurance contract authorized by Section 305.171, Revised Code, if the premium cost for such insurance is in excess of two thousand dollars.

2. There is no statutory limitation on the term of a group health insurance contract authorized by Section 305.171, Revised Code.

3. Community mental health and retardation board employees (when such board is within a single county), county agricultural experiment farm employees, and county mental retardation board employees, are all "county employees" for the purposes of Section 305.171, Revised Code.

4. Non-teaching employees of a county school board are not within the scope of Section 305.171, Revised Code, as they may receive group health insurance pursuant to Section 3313.02, Revised Code.

To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio

By: Paul W. Brown, Attorney General, May 16, 1969

I have before me your request for my opinion which reads in essence:

"1. Is it necessary to have competitive bidding before entering into a contract to procure group insurance as provided in Section 305.171, Revised Code?

"2. May the contract be entered into for only one (1) year, or three (3) years, or five (5) years, or may it be entered into for an indefinite period?

"3. Are employees in the following departments considered County employees and within the scope of the statute:

"a. Community Mental Health and Retardation Program Employees.

"b. County Agricultural Experiment Farm Employees.

"c. County Mental Retardation Board Employees.

"d. County School Board Non-teaching Employees."

Section 305.171, Revised Code, provides:

"The board of county commissioners of any county may procure and pay all or any part of the cost of group hospitalization, surgical, major medical, or sickness and accident insurance or a combination of any of the foregoing types of insurance or coverage for county officers and employees and their immediate dependents, whether issued by an insurance company or a hospital service association duly authorized to do business in this state."

Section 307.86, Revised Code, provides:

"Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of two thousand dollars, except as otherwise provided in section 307.02, 3501.301 3501.30.17, 3505.13, 5543.19, 5555.71, 5713.01, or 6137.05, of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when:

"(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists and such determination and the reasons therefor are entered in the minutes of the proceedings of the board, when:

"(1) The estimated cost is less than ten thousand dollars or

"(2) There is actual physical disaster to structures;

"(B) Such purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county and the only source of supply for such supplies, part, or parts is limited to a single supplier;

"(C) Such purchase is from the federal government, state, another county or contracting authority thereof, a board of education, township, or municipal corporation;

"(D) Such lease is a renewal of a lease for electronic data processing equipment services or systems."

(Emphasis added)

Since group health insurance would be "purchased", as the

word is used in Section 307.86, supra, and does not fall within the enumerated exceptions to such statute, it follows that competitive bidding would be necessitated, assuming the premium cost was "in excess of two thousand dollars".

There is no time limitation set by statute on such a group health insurance contract, but insurance contracts of this type are generally for a one-year term and renewable automatically upon payment of premium after the one year elapses.

You ask next whether certain groups of employees are "county employees" within the scope of Section 305.171, supra. Employees of the community mental health and retardation board are hired by the executive director of such board, pursuant to Section 340.04 (E), Revised Code. The executive director is appointed by the aforementioned board itself, consisting of three members, two-thirds of whom are appointed by the county commissioners and one-third of whom is appointed by the director of the state department of mental hygiene, pursuant to Section 340.02, Revised Code. Primary responsibility for appropriating money for the salaries of such employees is vested with the county commissioners pursuant to Section 340.07, Revised Code, although the state reimburses the community board for appropriation in certain specialized areas. But primary control and remunerative responsibility for employees of a community mental health and retardation board remains with the county. From this, I can only conclude that employees of a community mental health and retardation board are "county employees", within the scope of Section 305.171, supra.

Section 903.09, Revised Code, provides:

"The board of county commissioners of any county may establish an experiment farm within such county."

Funds are appropriated for such farm by means of a county-wide property tax levied by the county commissioners, pursuant to Section 903.12, Revised Code, and by the issuance of notes or bonds of the county by the county commissioners pursuant to Section 903.13, Revised Code. The experiment farm is then purchased with the approval of the majority of the county commissioners and the majority of the board of control of the state agricultural experiment station, pursuant to Section 903.14, Revised Code. Section 903.15, Revised Code, provides:

"The equipment of an experiment farm shall consist of such buildings, drains, fences, implements, livestock, stock feed, and teams as shall be deemed necessary by the board of control of the Ohio agricultural experiment station at any time for the successful work of such farm, and the initial equipment shall be provided by the county in which the farm is established, together with a sufficient fund to pay the wages of the laborers required to conduct the work of such farm during the first season. The board of county commissioners shall appropriate for the payment of the wages of laborers employed in the management of such farms and for the purchase of supplies, materials, implements, livestock, stock feed, and teams, and for the construction of buildings, drains, and fences necessary to the proper

conduct of such farms, such sums not exceeding two thousand dollars annually for any farm, as may be agreed upon between such board of county commissioners and the board of control." (Emphasis added)

Section 903.17, Revised Code, vests in the director of the state agricultural experimental station the management and power of appointing the employees of a county experiment farm. But the county commissioners are still vested with the responsibilities of establishing and appropriating funds for such a farm. Since the initiative for an experiment farm and the source of farm employee salary payments are county oriented, I believe they are properly classified as "county employees" for the purposes of Section 305.171, supra.

The seven member county board of mental retardation is created pursuant to Section 5126.01, Revised Code, which provides that five members of such board shall be appointed by the county commissioners and the other two shall be the probate judge of such county or his delegate and one other person appointed by such probate judge. Section 5126.03 (C), Revised Code, provides that a county board of mental retardation shall:

"Employ such personnel and provide such service, facilities, transportation, and equipment as are necessary;"

Section 5126.03 (D), supra, provides:

"(D) Provide such funds as are necessary for the operation of training centers and workshops.

"Any county board of mental retardation may enter into a contract with another such board of another county or with a public or nonprofit agency or organization of the same or another county, to provide the training center, workshop facilities and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable.

"The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation to perform its functions and duties as provided by this section."

Thus, principal control of the composition of the county mental retardation board and responsibility for appropriating funds for the functioning of such board is vested in the county commissioners. The retardation board, in turn, appoints all employees, but in all its activities is subject to the rules and regulations, and standards of the state commissioner of mental hygiene, pursuant to Section 5126.03, supra. This situation is another instance of a board primarily county oriented and funded, but subject to state directives. I conclude that employees of the county mental retardation board are county employees within the scope of Section 305.171, supra. This result is tacitly assumed in Opinion No. 68-140, Opinions of the Attorney General for 1968, which considered a related question.

The status of non-teaching employees of a county school board

with respect to Section 305.171, supra, need not be considered as such employees' group health insurance coverage is authorized by Section 3313.202, Revised Code, which provides:

"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 a hospital service association duly licensed by this state, covering the teaching or nonteaching employees of the school district, or a combination of both, or in the case of hospitalization, surgical, or major medical insurance, the dependent children and spouses of such employees; provided if such coverage affects only the teaching employees of the district such coverage shall be with the consent of the majority of such employees of the school district, or if such coverage affects only the nonteaching employees of the district such coverage shall be with the consent of a majority of such employees. If such coverage is proposed to cover all the employees of a school district, both teaching and nonteaching employees, such coverage shall be with the consent of a majority of all the employees of a school district. As used in this section 'teaching employees' means any person employed in the public schools of this state in a position for which he is required to have a certificate pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code. 'Nonteaching employees' as used in this section means any person employed in the public schools of the state in a position for which he is not required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code."

Therefore, it is my opinion and you are advised:

1. It is necessary to have competitive bidding, pursuant to Section 307.86, Revised Code, before entering into a group health insurance contract authorized by Section 305.171, Revised Code, if the premium cost for such insurance is in excess of two thousand dollars.
2. There is no statutory limitation on the term of a group health insurance contract authorized by Section 305.171, Revised Code.
3. Community mental health and retardation board employees (when such board is within a single county), county agricultural experiment farm employees, and county mental retardation board employees, are all "county employees" for the purposes of Section 305.171, Revised Code.
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