

**OPINION NO. 92-006****Syllabus:**

Where a county that employs more than twenty-five persons provides health care benefits to its officers and employees pursuant to a self-insurance plan established under R.C. 9.833(B), R.C. 1742.33 requires the county to offer its employees the option of participating in a health maintenance organization holding a valid certificate of authority that provides health care services in the geographic areas in which a substantial number of those employees reside.

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**To: Jim Slagle, Marion County Prosecuting Attorney, Marion, Ohio**  
**By: Lee Fisher, Attorney General, March 18, 1992**

You have requested an opinion on the following question: "May a board of county commissioners provide health insurance coverage to its employees solely by means of a self-insurance program, or must the board also give its employees the option of participating in a plan offered by a health maintenance organization?" You note that your question is prompted by the recent enactment of R.C. 9.833, which grants political subdivisions specific authority to provide health care coverage to employees through individual or joint self-insurance programs, and the provisions of R.C. 1742.33 that require certain public employers to offer health maintenance organization enrollment to their employees.

#### **Health Care Coverage For County Officers, Employees, and Their Dependents**

R.C. 305.171(A), in part, authorizes a board of county commissioners to contract, purchase, or procure various types of group health care coverage for county officers, employees, and their dependents where the group insurance policies are "issued by an insurance company, a medical care corporation organized under [R.C. Chapter 1737], or a dental care corporation organized under [R.C. Chapter 1740]." R.C. 305.171(B) also authorizes a board of county commissioners to negotiate and contract for group insurance or health care services with health care corporations organized under R.C. Chapter 1738 and health maintenance organizations organized under R.C. Chapter 1742, with certain limitations. R.C. 305.171(E), however, permits a board of county commissioners the alternative of providing the benefits described in R.C. 305.171 through an individual self-insurance program or a joint self-insurance program as provided in R.C. 9.833.

As enacted in Am. Sub. H.B. 737, 118th Gen. A. (1990) (eff. April 11, 1991), R.C. 9.833(B) authorizes a political subdivision, including a county, *see* R.C. 9.833(A), to provide health care benefits to its officers and employees in the following ways:

- (1) Establish and maintain an individual self-insurance program with public moneys to provide authorized health care benefits in accordance with division (C) of this section;
- (2) After establishing an individual self-insurance program, agree with other political subdivisions that have established individual self-insurance programs for health care benefits, that their programs will be jointly administered in a manner specified in the agreement;
- (3) Pursuant to a written agreement and in accordance with division (C) of this section, join in any combination with other political subdivisions to establish and maintain a joint self-insurance program to provide health care benefits;
- (4) Pursuant to a written agreement, join in any combination with other political subdivisions to procure or contract for policies, contracts, or plans of insurance to provide health care benefits for their officers and employees subject to the agreement;
- (5) Use in any combination any of the policies, contracts, plans, or programs authorized under this division.

Division (C) of R.C. 9.833 establishes numerous requirements for the establishment and funding of the plans authorized by division (B). *See also* R.C. 9.833(D) (exempting individual municipal self-insurance programs from the requirements of R.C. 9.833(C)(1),(2), and (4)).

Your request states that the board of county commissioners intends to offer county personnel health insurance coverage through one of the methods authorized by R.C. 9.833(B). In that event, you ask whether R.C. 1742.33 requires the county to offer county personnel the option of participating in a plan offered by a health maintenance organization, notwithstanding the absence of an express directive to that effect in R.C. 9.833. R.C. 1742.33 states in pertinent part:

*Each employer, public or private, in this state which offers its employees a health benefit plan and employs not less than twenty-five employees, and each employee benefit fund in this state which offers its members any form of health benefits, shall make available to and inform its employees or members of the option to*

*enroll in at least one health maintenance organization<sup>1</sup> holding a valid certificate of authority which provides health care services in the geographic areas in which a substantial number of such employees or members reside. (Emphasis and footnote added.)*

Your request asks that I assume, for purposes of answering your question, that the county has twenty-five or more employees and that a health maintenance organization exists which holds a valid certificate of authority to provide health care services in the geographic area in which a substantial number of those employees reside. With those assumptions in mind, if the county is an "employer" that offers its employees a "health benefit plan," it must offer its employees the option to enroll in at least one health maintenance organization, as described in R.C. 1742.33.

The term "employer," as used in R.C. Chapter 1742, is not specifically defined. R.C. 1742.33 does, however, include both public and private employers. Employees at the county level are appointed by various county "appointing authorit[ies]," as that term is defined in R.C. 124.01(D), who have the power to fix their employees' compensation within certain limits. *See generally* 1984 Op. Att'y Gen. No. 84-092 (explaining the compensation scheme for county employees). At the same time, however, the General Assembly has provided certain fringe benefits commonly for all county employees. *See, e.g.,* R.C. 124.38 (providing minimum sick leave benefits for county employees); R.C. 325.19 (prescribing minimum vacation leave benefits and holiday pay for county employees). Thus, pursuant to R.C. 9.833 and R.C. 305.171, the county, acting through its board of commissioners, is authorized to provide health care benefits for all county personnel. Further, at the time R.C. Chapter 1742 was enacted in 1975-1976 Ohio Laws, Part II, 2279 (Am. Sub. H.B. 296, eff. July 15, 1976), R.C. 305.171 was also amended to authorize boards of county commissioners to contract with health maintenance organizations. I readily conclude, therefore, that the county is the "public employer" of county employees for purposes of R.C. 1742.33.

Having concluded that the county is a public employer, for purposes of R.C. 1742.33, it is necessary to determine whether the county's provision of health care benefits under R.C. 9.833(B) constitutes the offering of a "health benefit plan," as that term is used in R.C. 1742.33. Although the phrase "health benefit plan," as used in R.C. Chapter 1742, is not defined by statute, reference to Am. Sub. H.B. 296, which enacted R.C. Chapter 1742 and amended R.C. 305.171, indicates the intended scope of the term "health benefit plan," as used in R.C. 1742.33.

As amended in Am. Sub. H.B. 296, R.C. 305.171(A) empowered boards of county commissioners to "procure and pay all or any part of the cost of group hospitalization, surgical, major medical, sickness and accident insurance, 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..." R.C. 305.171(B) also empowered boards of county commissioners, in part, to negotiate and contract with "health maintenance organizations organized under [R.C. Chapter 1742] for any plan or plans of health care services..." Authority to act under R.C. 305.171(B) was conditioned upon the board's permitting each officer or employee to:

(1) Exercise an option between a *plan* offered by an insurance company, hospital service association or nonprofit medical care corporation as provided in division (A) of this section and such a plan or plans offered by health care corporations or health maintenance organizations under this division, on the condition that the officer or employee shall pay any amount by which the cost of the plan chosen by such officer or employee pursuant to this division exceeds the cost of the *plan* offered under division (A) of this section; and

(2) Change from one of the plans to another at a time each year as determined by the board. (Emphasis added.)

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<sup>1</sup> *See generally* R.C. 1742.01(G) (defining "[h]ealth maintenance organization," as used in R.C. Chapter 1742).

R.C. 305.171(B) (as amended in Am. Sub. H.B. 296). Thus, when the board of county commissioners provided any of the benefits enumerated in R.C. 305.171(A) or (B), it was offering such benefits under a "plan." Although R.C. 305.171(A) also allowed for the provision of group life insurance benefits, so long as the county also offered any of the other types of benefits listed, all of which relate to health care, it was clearly offering a "health benefit plan," the terminology used in R.C. 1742.33 as enacted in the same bill.

Subsequently, the General Assembly enacted R.C. 9.833 in Am. Sub. H.B. 737, which also amended R.C. 305.171 by adding division (E), stating: "The board of county commissioners may provide the benefits described in this section through an individual self-insurance program or a joint self-insurance program as provided in [R.C. 9.833]." R.C. 305.171(E), therefore, makes it clear that the benefits a county may offer under R.C. 9.833 are the *same* benefits as those it may offer under R.C. 305.171, the difference being only the manner of funding the scheme pursuant to which the benefits are provided.

It is well settled that the General Assembly is presumed to act with knowledge of existing statutes. *Charles v. Fawley*, 71 Ohio St. 50, 72 N.E. 294 (1904). Thus, I must assume that when it enacted R.C. 9.833, the General Assembly was aware of the existing statutory scheme which subjected a county, when providing its personnel health care benefits under R.C. 305.171, to the terms of R.C. 1742.33. I must further assume that the General Assembly was aware that the benefits available under R.C. 9.833 are identical to those available under R.C. 305.171. Absent statutory language indicating a legislative intent to treat a program offered under R.C. 9.833 as something other than a health benefit plan, I conclude that where a county provides health care benefits to its personnel under R.C. 9.833(B), the county is providing a "health benefit plan" for purposes of R.C. 1742.33. Had the General Assembly intended, at the time it enacted R.C. 9.833, that a political subdivision, such as a county, not be subject to R.C. 1742.33 when providing its employees health care benefits under a self-insurance plan, it could easily have expressed that intention. Cf. R.C. 9.833(C)(9) (stating that a joint self-insurance program is not an insurance company, and its operation is not subject to the insurance laws of the state). I conclude, therefore, that where a county provides any of the health care benefits enumerated in R.C. 305.171 to county personnel under a program authorized by R.C. 9.833(B), the county is offering a "health benefit plan," as that term is used in R.C. 1742.33.<sup>2</sup>

#### Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that, where a county that employs more than twenty-five persons provides health care benefits to its officers and employees pursuant to a self-insurance plan established under R.C. 9.833(B), R.C. 1742.33 requires the county to offer its employees the option of participating in a health maintenance organization holding a valid certificate of authority that provides health care services in the geographic areas in which a substantial number of those employees reside.

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<sup>2</sup> You note in your letter, that a self-insurance plan established by a county pursuant to R.C. 9.833(B) may be affected adversely by the requirement in R.C. 1742.33 that the county offer its employees the option of enrolling in a health maintenance organization plan. Given a choice, lower risk employees often choose the health maintenance organization option because of its economic advantage to them, leaving higher risk employees or employees with special needs to be covered by the self-insurance plan. In view of the existing statutory scheme, however, resolution of this very real problem is a matter which can be addressed only by action of the General Assembly.