

December 13, 2018

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
Administration Building, 6th Floor
21 West Boardman Street
Youngstown, Ohio 44503

SYLLABUS:

2018-032

A township trustee currently receiving the maximum authorized salary under R.C. 505.24 may accept payments from a cash payment in lieu of benefit plan established pursuant to R.C. 505.603 without violating the maximum salary restrictions under R.C. 505.24 or the prohibition against in-term compensation changes under Ohio Const. art. II, § 20, so long as the cash payment in lieu of benefit plan was established prior to the commencement of the trustee's current term in office.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

December 13, 2018

OPINION NO. 2018-032

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
Administration Building, 6th Floor
21 West Boardman Street
Youngstown, Ohio 44503

Dear Prosecutor Gains:

You have requested an opinion whether an elected township trustee is permitted to accept a cash payment in lieu of a benefit offered under a R.C. 505.603 cafeteria plan given the salary limits imposed on township trustees by R.C. 505.24. You explain that the Beaver Township Board of Trustees offers a “Cash in Lieu of Benefit Plan” to township officers and employees. Under the plan, an officer or employee can opt out of the township’s health insurance coverage and elect to receive a cash payment of up to twenty-five percent of the premium payments the township otherwise would have paid on behalf of the officer or employee. A township trustee has opted out of the township’s health insurance coverage and wishes to receive the payments authorized by the township’s cash payment in lieu of benefit plan. The salary of members of the Beaver Township Board of Trustees has been established at the maximum amount authorized by R.C. 505.24. You further explain that the cash payment in lieu of benefit plan was available prior to the commencement of the terms of all three trustees of Beaver Township. Under these circumstances, you ask whether a township trustee may avail herself of the cash payment in lieu of benefit without violating the salary restrictions of R.C. 505.24.

Ohio Constitution Art. II, § 20

Your explanation that a member of the Beaver Township Board of Trustees wishes to avail herself of Beaver Township’s cash payment in lieu of benefits plan adopted pursuant to R.C. 505.603 implies that the trustee does not currently receive cash payments in lieu of benefits under a plan adopted pursuant R.C. 505.603. The receipt of such payments in the middle of the trustee’s current term in office implicates the prohibition against in-term compensation or salary changes under Ohio Const. art. II, § 20. While we recognize your primary question regards the potential violation of the maximum salary amounts established by R.C. 505.24, we will first address the receipt of cash payments in lieu of health insurance benefits by a township trustee in the middle of her term in office and whether such payments violate the prohibition against in-term compensation changes under Ohio

Const. art. II, § 20. Although the determination of whether certain in-term changes in an officer's compensation or salary violate Ohio Const. art. II, § 20 involves factual issues that cannot be resolved by means of an Attorney General Opinion, "we are able to offer you guidance for how to make these factual determinations." 2012 Op. Att'y Gen. No. 2012-024, at 2-204.

Article II, § 20 of the Ohio Constitution prohibits in-term compensation and salary changes for public officers and states 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 constitutional provision thus 'prohibits any change, whether an increase or decrease, in an officer's salary during his term.'" 2011 Op. Att'y Gen. No. 2011-015, at 2-141 (quoting 1993 Op. Att'y Gen. No. 93-045, at 2-223). A member of a board of township trustees is an officer for the purpose of Ohio Const. art. II, § 20. 2000 Op. Att'y Gen. No. 2000-043, at 2-260. The provision applies to compensation increases or decreases "approved by subordinate bodies to whom the General Assembly has delegated the authority to fix compensation," such as a board of township trustees. *See id.* at 2-261. For the purpose of the prohibition against in-term compensation changes, compensation may include not only salary, but also the value of fringe benefits paid on behalf of a public officer by a governmental entity. *See State ex rel. Artmayer v. Bd. of Trustees of Delhi Twp.*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) (syllabus). For the purpose of Ohio Const. art. II, § 20, "[i]t is well established that the cost of health insurance is a part of the compensation of a public officer." 2012 Op. Att'y Gen. No. 2012-024, at 2-201; 1992 Op. Att'y Gen. No. 92-068 (syllabus, paragraph 2) ("Ohio Const. art. II, § 20 prohibits any change in the compensation of a township trustee during the trustee's existing term; accordingly, the purchase of health or hospitalization insurance for a township trustee must be authorized by resolution before the trustee's term begins") (modified on other grounds by 2005 Op. Att'y Gen. No. 2005-038); *see also State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) ("[f]ringe benefits, such as [payments for group medical and hospital plans], are valuable perquisites of an office, and are as much a part of the compensation[] of office as a weekly pay check").

The Ohio Supreme Court has established the following test for determining whether an increase or decrease in salary or compensation in the middle of an officer's term is permitted under Ohio Const. art. II, § 20:

When a statute setting forth the formula for the compensation of an officer is effective before the commencement of the 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.

Section 20, Article II of the Constitution forbids the granting of in-term salary increases to officers when such changes are the result of direct legislative action on the section(s) of the Revised Code which are the basis of the officers' salaries.

Schultz v. Garrett, 6 Ohio St. 3d 132, 135, 451 N.E.2d 794 (1983). Thus, Ohio Const. art. II, § 20 is aimed at preventing compensation changes by the General Assembly or other legislative body in the middle of an officer's term. See 2005 Op. Att'y Gen. No. 2005-031, at 2-330. Accordingly, so long as the Beaver Township Board of Trustees offered the cash payment in lieu of benefit option to township trustees at the time the trustee commenced her current term in office, then the change in public dollars expended on the trustee's behalf is not prohibited by Ohio Const. art. II, § 20. See 2012 Op. Att'y Gen. No. 2012-024, at 2-205.

In 2005 Op. Att'y Gen. No. 2005-031, we concluded that a county officer could change the health plan option in which he was enrolled and avail himself of the county's cash payment in lieu of benefit plan "so long as such change was not due to a mid-term legislative change to the formula for calculating the officer's compensation, *i.e.*, the officer's change in coverage was to a level that was available to him at the commencement of his term." 2005 Op. Att'y Gen. No. 2005-031 (syllabus, paragraph 1). Even when a county officer begins his term under one health plan option but then elects to discontinue receiving the benefits under that option and opt into the cash payment in lieu of benefit plan, we concluded, there is no violation of Ohio Const. art. II, § 20. *Id.* (syllabus, paragraph 3); see also *id.* at 2-330 ("the activity at which the prohibition of Ohio Const. art. II, § 20 is aimed is direct legislative adjustment of the formula used in calculating the compensation of an officer.... Thus, if a county officer voluntarily elects to discontinue receiving health care insurance from the county as part of his compensation, the decrease in the officer's compensation results not from any action of the General Assembly or of the county commissioners with respect to providing health insurance") (citation omitted). Accordingly, we determined that a county officer's decision to avail himself of a cash payment in lieu of benefit option that was available to him at the commencement of his term was not the result of direct legislative action by the board of county commissioners or General Assembly and thus did not violate Ohio Const. art. II, § 20. See *id.* at 2-332 to 2-333; accord 2017 Op. Att'y Gen. No. 2017-026, at 2-274 ("if a board of township trustees offered cash payments ... to township officers under ... R.C. 505.603 at the commencement of those officers' terms of office, and those cash payments ... were subsequently discontinued by the board of township trustees upon the enactment of the [federal Patient Protection and Affordable Care Act], the resumption of those benefits pursuant to 26 U.S.C.A. § 9831(d) does not constitute the type of direct legislative change prohibited by Ohio Const. art. II, § 20").

You explain that the Beaver Township cash payment in lieu of benefit plan, adopted pursuant to R.C. 505.603, was available to the township trustee in question at the time the trustee commenced her current term in office. The trustee would now like to avail herself of the cash payments offered under the township's plan. The change in the level of benefits she receives would therefore be the result of an external factor, namely the township trustee herself electing to receive the payments, and not the result of a direct legislative action. See 2012 Op. Att'y Gen. No. 2012-024, at 2-204 ("a mid-term change in the dollar amount expended for each township officer's health insurance coverage does not alone constitute a prohibited change in compensation. The change is permissible as long as it is not the result of direct legislative action"); 2005 Op. Att'y Gen. No. 2005-031, at 2-331 (the unavailability of a particular insurance plan originally selected by a county officer in the middle of a county officer's term "is not attributable to a mid-term change in the formula by the county commissioners. So long as other health insurance plans that were available at the commencement of

the officer's term remain available, the officer may choose from among those other plans, regardless of the differences from his originally selected insurance plan, and any changes in the benefits received by the officer or the premium paid on his behalf do not violate Ohio Const. art. II, § 20"). Under the facts presented in your letter, and in light of the legal principles discussed above, we conclude that the trustee's receipt of such cash payments mid-term will not violate the prohibition against in-term compensation changes under Ohio Const. art. II, § 20, so long as the cash payment in lieu of benefit option was, in fact, available to the township trustee at the time she commenced her current term in office.¹

¹ A cafeteria plan approved by a board of township trustees shall comply with federal law. 2017 Op. Att'y Gen. No. 2017-026, at 2-266 to 2-267. If the township employs on average less than 50 full-time employees on business days during the preceding calendar year and does not offer a group health plan to any of its employees, the township is an "eligible employer" that may provide its employees a "qualified small employer health reimbursement arrangement." 26 U.S.C.A. § 9831(d)(3)(B) (West Supp. 2017); *see also* 42 U.S.C.A. § 4980(H)(c)(2) (West Supp. 2017). A qualified small employer health reimbursement arrangement is excepted from the definition of "group health plan" and, therefore, is not subject to the annual dollar limit prohibition that applies to group health plans. *See* 26 U.S.C.A. § 9831(d)(1) (West Supp. 2017); 42 U.S.C.A. § 300gg-11 (West 2011). A qualified small employer health reimbursement arrangement is (1) an arrangement funded solely by the eligible employer under which no reduction contributions are made; (2) the arrangement provides for the payment of, or reimbursement of, expenses for medical care incurred by an eligible employee or the employee's family members after the employee provides proof of coverage; (3) payments or reimbursements do not exceed the annual dollar amounts specified in 26 U.S.C.A. § 9831(d)(2)(B)(iii); and (4) the arrangement is provided on the same terms to all eligible employees of the employer. 26 U.S.C.A. § 9831(d)(2)(A)-(B) (West Supp. 2017). "A board of township trustees' cash payment arrangement established under R.C. 505.603(A) that satisfies all the foregoing conditions and requirements is a 'qualified small employer health reimbursement arrangement'" under 26 U.S.C.A. § 9831(d)(2). 2017 Op. Att'y Gen. No. 2017-026, at 2-267.

However, "[c]ash payments made pursuant to R.C. 505.603(A) constitute a 'qualified small employer health reimbursement arrangement' only when a board of township trustees does not offer any other group health plan to township officers and employees." *Id.*; *see also* 26 U.S.C.A. § 9831(d)(3)(B)(ii) (West Supp. 2017). If a cash payment in lieu of benefit plan established pursuant to R.C. 505.603(A) does not satisfy the requirements to 26 U.S.C.A. § 9831(d)(2), then the plan is not excepted from the definition of "group health plan" and is, therefore, subject to the annual dollar limit prohibition for group health plans. *See* 42 U.S.C.A. § 300gg-11(a) (West 2011); *see also* 2018 Op. Att'y Gen. No. 2018-001 (syllabus, paragraph 2) ("[i]nsofar as a township's reimbursement pursuant to R.C. 505.60(D) of out-of-pocket premiums attributable to health care insurance that a township officer obtains from the officer's private employer is a 'group health plan,' and is not a 'qualified small employer health reimbursement arrangement,' it shall comply with the annual dollar limit prohibition of 42

Maximum Authorized Salary under R.C. 505.24 and Acceptance of Cash Payments in Lieu of Insurance Benefits under a Plan Established Pursuant to R.C. 505.603(A)

R.C. 505.24 establishes the maximum salary that a township trustee is authorized to receive. The General Assembly has delegated its authority to establish salaries for township trustees to the boards of township trustees, within the parameters under R.C. 505.24. The maximum amount a township trustee may be paid during a calendar year is determined by the size of the township's budget. R.C. 505.24(A). *See* 1999 Op. Att'y Gen. No. 99-015 (syllabus, paragraph 1) (“[f]or purposes of calculating the authorized compensation of the township trustees ... pursuant to R.C. 505.24 ..., the term ‘budget’ refers to the total amount of resources available to the township pursuant to the official certificate of estimated resources or amendments to the certificate”). The board of township trustees may elect to pay trustees on a per diem or annual salary basis. *See* R.C. 505.24(D). If the board of trustees elects to pay trustees by annual salary, “[t]he amount of the annual salary approved by the board shall be no more than the maximum amount that could be received annually by a trustee if the trustee were paid on a per diem basis.” *Id.* The annual salary is paid “in equal monthly installments” to the trustee. *Id.* “Any change in the method of compensation shall be effective on the first day of January of the year following the year during which the board has voted to change the method of compensation.” *Id.* You explain that the trustees of Beaver Township currently receive the maximum salary authorized by R.C. 505.24.

In addition to an annual salary, a township trustee may receive insurance benefits by virtue of her position as a trustee if the board of township trustees offers insurance benefits to officers and employees of the township. A board of township trustees 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 those types of insurance for township officers and employees. R.C. 505.60(A). In other words, a board of township trustees may pay all or part of the costs of providing insurance on a township trustee's behalf. *Id.* A board of township trustees is also authorized to adopt a cash payment in lieu of benefit plan under which a township officer or employee receives a cash payment up to twenty-five percent of the premiums that the township otherwise would have paid on behalf of the officer or employee:

U.S.C.A. § 300gg-11(a)”). Moreover, a reimbursement arrangement such as a cash payment in lieu of benefit plan that is “integrated with another group health plan in accordance with federal law complies with the annual dollar limit prohibition, even though the reimbursement is set at an annual dollar limit, so long as the reimbursement arrangement and the other group health plan, in combination, comply with the annual dollar limit prohibition.” *See id.* at 2-8. “A reimbursement arrangement that is not integrated with another group health plan in accordance with federal law violates the annual dollar limit prohibition.” *Id.* “Generally, an employer's reimbursement is ‘integrated’ with another group health plan when, among other requirements, eligibility for the reimbursement is conditioned upon the employee's actual enrollment in another group health plan that is not a health reimbursement arrangement ... and that satisfies the requirements of the [federal Patient Protection and Affordable Care Act].” *Id.* at 2-4.

(A) In addition to or in lieu of providing benefits to township officers and employees under section 505.60, 505.601, or 505.602 of the Revised Code, a board of township trustees may offer benefits to officers and employees through a cafeteria plan that meets the requirements of section 125 of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C.A. 125, as amended, after first adopting a policy authorizing an officer or employee to receive a cash payment in lieu of a benefit otherwise offered to township officers or employees under any of those sections, but only if the cash payment does not exceed twenty-five per cent of the cost of premiums or payments that otherwise would be paid by the board for benefits for the officer or employee under an offered policy, contract, or plan.

R.C. 505.603(A). To receive the cash payment in lieu of insurance benefit, the officer or employee must acknowledge, in writing, that he or she “is covered under another health insurance or health care policy, contract, or plan ... and setting forth the name of the employer, if any, that sponsors the coverage, the name of the carrier that provides the coverage, and an identifying number of the applicable policy, contract, or plan.” *Id.* The cash payment is to compensate an officer or employee for opting out of health insurance benefits the township would otherwise provide to the officer or employee and premiums the township otherwise would pay on behalf of the officer or employee.

A board of township trustees is also authorized to provide various other types of insurance benefits to township officers and employees. For example, a board of township trustees may reimburse township officers and employees for certain premium payments paid by the officers and employees, subject to federal and state requirements. *See* R.C. 505.60; R.C. 505.601 (“[i]f a board of township trustees does not procure an insurance policy or group health care services as provided in [R.C. 505.60], the board of township trustees may reimburse any township officer or employee for each out-of-pocket premium attributable to the coverage provided for that officer or employee for insurance benefits described in [R.C. 505.60(A)] that the officer or employee otherwise obtains,” if statutory conditions are met); *see also* 2018 Op. Att’y Gen. No. 2018-001 (syllabus, paragraphs 2 and 3); 2017 Op. Att’y Gen. No. 2017-026 (syllabus, paragraph 6). A board of township trustees may also “procure and pay all or any part of the cost of group life insurance to insure the lives of officers and employees of the township,” not to exceed fifty thousand dollars per officer. R.C. 505.602.

You question whether a township trustee’s acceptance of cash payments in lieu of insurance benefits under a plan established pursuant to R.C. 505.603(A) violates the maximum authorized salary amounts of R.C. 505.24 when the trustee currently receives the maximum authorized salary under the statute. In one sense, a township trustee who elects to receive cash payments in lieu of health insurance benefits receives compensation in addition to her salary and, because the compensation comes in the form of cash payments, it could be argued that a trustee currently receiving the maximum salary authorized by law will receive more than the authorized dollar amount under R.C. 505.24 if she accepts the cash payments. We believe the better view, however, is that a cash payment in lieu of health insurance benefits is a fringe benefit that is paid in addition to a township trustee’s salary, just as health insurance premiums are paid on behalf of that trustee in addition to the trustee’s salary. As a fringe benefit, such a cash payment in lieu of benefits does not go into the calculation of a trustee’s annual salary for the purpose of the maximum authorized salary amounts under R.C. 505.24.

“The paramount consideration in determining the meaning of a statute is legislative intent.” *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶ 34. “To determine the legislative intent, [courts] first review the statutory language.” *State ex rel. Wolfe v. Delaware Cnty. Bd. of Elections*, 88 Ohio St. 3d 182, 184, 724 N.E.2d 771 (2000). “In reviewing the statutory language, [courts] accord the words used their usual, normal, or customary meaning.” *Id.* Statutes relating to the same subject matter must be read together in an attempt to “arrive at a reasonable construction giving the proper force and effect, if possible, to each statute.” *See D.A.B.E., Inc. v. Toledo-Lucas Cnty. Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 77 N.E.2d 536, at ¶ 20; *see also State ex rel. Merydith Constr. Co. v. Dean*, 95 Ohio St. 108, 115, 116 N.E. 37 (1916) (“[a]ll laws newly passed by the general assembly must be presumed to harmonize with existing statutes on kindred subjects not either expressly or impliedly repealed”); R.C. 1.47(B) (when the General Assembly enacts a statute, “it is presumed that ... [t]he entire statute is intended to be effective”).

Insurance or insurance premiums paid by an employer on behalf of an employee are fringe benefits. “[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.” 1982 Op. Att’y Gen. No. 82-006, at 2-16 to 2-17. For example, a county engineer is authorized to provide his employees the fringe benefit of an annual bonus as a means of inducing their continued employment with the engineer’s office, so long as the annual bonuses do not exceed the moneys appropriated to the office by the board of county commissioners. 1992 Op. Att’y Gen. No. 92-049, at 2-199 to 2-200. *Compare* 2007 Op. Att’y Gen. No. 2007-010, at 2-74 (bonus payments to employees who would soon be leaving a public office “solely to reward or recognize the past job performance” of those employees do not qualify as fringe benefits). As discussed above, the General Assembly has expressly authorized a board of township trustees to provide various types of insurance and pay all or part of insurance premiums on behalf of township officers and employees. R.C. 505.60. One fringe benefit that a board of township trustees may provide is a cash payment in lieu of insurance premiums paid on behalf of a township officer or employee up to twenty-five percent of the cost of premiums or payments that otherwise would be paid by the board for insurance benefits for the officer or employee. R.C. 505.603; 2017 Op. Att’y Gen. No. 2017-026, at 2-266 to 2-267.

R.C. 505.24 uses the terms “salary” and “compensation” to refer to the amount of dollars that township trustees are authorized to receive based on the size of the township’s budget. *See* 1999 Op. Att’y Gen. No. 99-015 (syllabus, paragraph 1) (defining “budget” for the purpose of R.C. 505.24). For example, trustees of a township with a budget of \$250,000 or less were authorized to receive a stipend of “thirty-eight dollars and forty-nine cents per day for not more than two hundred days” in calendar year 2016. R.C. 505.24(A)(1). As an alternative to providing township trustees a per diem stipend, a board of township trustees, by unanimous vote, “may adopt a method of compensation consisting of an annual salary to be paid in equal monthly payments.” R.C. 505.24(D) (emphasis added). The annual salary cannot exceed the maximum amount that would be paid to a township trustee if the township paid trustees on a per diem basis. *Id.* In this example, a township trustee receiving an annual salary was authorized to receive \$7,698.00 during calendar year 2016, which is equal to the amount the trustee would have received if he or she were compensated at the maximum authorized per diem amount (\$38.49 multiplied by 200 days). “A board of township trustees that has

adopted a salary method of compensation may return to a method of compensation on a per diem basis ... by a majority vote.” *Id.*

The language used in R.C. 505.24 is evidence that the General Assembly intended the maximum compensation that a township trustee is authorized to receive means the maximum salary the trustee is authorized to receive, exclusive of the value of fringe benefits. For example, R.C. 505.24 establishes the maximum “per diem” amount that a trustee may receive for working a set number of days, an indication that the General Assembly meant salary exclusive of fringe benefits. Further, the General Assembly authorized a board of township trustees to pay township trustees on an “annual salary” basis as an alternative to the per diem basis. R.C. 505.24(D). “Per diem,” meaning “for each day,” has been defined as “[a] monetary daily allowance” or “[a] daily fee; [especially], an amount of money that an employer pays a worker *for each day that is worked.*” *Black’s Law Dictionary* 1317 (10th ed. 2014) (emphasis added); *see also Black’s Law Dictionary* 1136 (6th ed. 1990) (defining “per diem” as “an allowance or amount of so much per day” and “pay for a day’s service” when “used in connection with compensation, wages or salary”). Similarly, “salary” has been defined as “fixed compensation paid regularly (as by the year, quarter, month, or week) for services: STIPEND.” *Webster’s Third New International Dictionary of the English Language* 2003 (unabridged ed. 1993); *see also id.* at 2245 (defining “stipend” as “a fixed sum of money typically modest in amount that is paid periodically in compensation for services ...: SALARY”). Salary thus reflects the payment of a wage for time worked. Had the General Assembly wished to include fringe benefits in the calculation of a trustee’s total authorized salary under R.C. 505.24, it would have included a statement to that effect in R.C. 505.24 itself. Instead, the General Assembly authorized a township trustee to receive a maximum compensation in terms of per diem amounts or annual salary, rather than in terms of per diem amounts or annual salary together with any fringe benefits. The General Assembly’s use of the terms “per diem” and “annual salary” in R.C. 505.24 is thus evidence that the General Assembly intended R.C. 505.24 to establish a maximum authorized annual salary, exclusive of the value of fringe benefits a trustee receives.

If compensation includes both salary and the value of fringe benefits paid on a township trustee’s behalf for the purpose of R.C. 505.24, then the statutes authorizing the provision of insurance benefits to township officers, located at R.C. 505.60-.603, are given little or no effect. In essence, those statutes would be read to include a condition that permits the provision of insurance benefits to township officers only if the value of those benefits does not result in exceeding the maximum salary amounts under R.C. 505.24. *See Lynch v. Gallia Cnty. Bd. of Comm’rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) (“a reviewing court must not construe a statute so as to supply words that are omitted”). In many townships, the provision of benefits that are authorized under R.C. 505.60-.603 would result in a township trustee receiving a total cash value in excess of the annual salary amounts set forth in R.C. 505.24. Monthly insurance premiums for medical and prescription drug plans often cost several hundred dollars. In the public sector in Ohio, for instance, the average cost of premiums for medical and prescription drug plans for a single township employee ranged from \$527 to \$586 per month. Ohio State Emp’t Relations Bd., *The Cost of Health Insurance in Ohio’s Public Sector* 9 (2017 ed.), available at http://www.serb.state.oh.us/sections/research/reports/Health_Insurance_Report_2017.pdf (last visited Dec. 10, 2018). Assuming a township offered a single medical plan to township trustees and the township paid \$527 per month on behalf of a township trustee, such a plan

would cost the township \$6,324 per year. For a township with an annual budget of \$250,000 or less during 2016, offering such a plan would have allowed the township to pay its township trustees a maximum annual salary of only \$1,374 (\$7,698 of the maximum authorized salary for the township trustee under R.C. 505.24 minus the cost of annual health insurance premiums paid on behalf of the township trustee). Moreover, average monthly premiums for family medical and prescription drug plans in townships during 2016 ranged from \$1,521 to \$1,708. *Id.* Assuming a township offered a family medical plan to township trustees and paid \$1,521 per month on behalf of a township trustee, such a plan would have cost the township \$18,252 per year for each township trustee who participated in the plan. For a township with an annual budget of \$250,000 or less during 2016, a township trustee who accepted such a plan would have drastically exceeded the maximum salary the trustee was authorized to receive under R.C. 505.24.²

Including the value of fringe benefits paid on behalf of a township trustee as part of the calculation of the trustee's maximum authorized salary under R.C. 505.24 results in a statutory scheme that is not feasible to execute. If a township trustee currently receives the maximum authorized salary, then any health insurance premiums paid on his or her behalf by the township would violate the maximum authorized salary amounts under R.C. 505.24. To avoid this problem, a township might pay its trustees a salary equal to the maximum authorized salary less the cost of premiums. For example, suppose a township is authorized to pay its township trustees \$100 per month and the board of township trustees decides to pay its trustees \$75 per month and pay the cost of health insurance premiums for its trustees, which amounts to \$25 per month.³ Under this arrangement, the township trustees would not run afoul of the maximum authorized salary amounts under R.C. 505.24. However, in this example, if premiums increase to \$30 per month the following year, then the township trustees would receive \$105 in total compensation per month, \$5 more than the maximum authorized compensation for trustees in this hypothetical township. If, under R.C. 505.24, the term "compensation" includes both salary and the value of fringe benefits paid on behalf of a township trustee by the township, then the board of township trustees would be required to decrease the salary of its trustees by \$5 per month to arrive at the maximum authorized monthly compensation of \$100 per month. This interpretation renders R.C. 505.24 difficult to execute because

² Assuming that a township trustee participating in the township's insurance plan paid a portion of the cost of monthly premiums, the average cost to the township for the trustee's family medical plan would have ranged from \$16,104 to \$19,030 on average per year, still vastly exceeding the maximum authorized salary amounts for a township trustee in a township with an annual budget of \$250,000 or less during calendar year 2016 pursuant to R.C. 505.24. See Ohio State Emp't Relations Bd., *The Cost of Health Insurance in Ohio's Public Sector* 9 (2017 ed.), available at http://www.serb.state.oh.us/sections/research/reports/Health_Insurance_Report_2017.pdf (last visited Dec. 10, 2018).

³ The monetary amounts in this example were selected for ease of understanding. As discussed above, monthly premiums for insurance plans in Ohio are, on average, significantly more expensive than the \$25 per month figure used in the example.

it requires a board of township trustees to constantly adjust trustee salaries to take into account changing premium payments made on behalf of township trustees. *See* R.C. 1.47(D) (when the General Assembly enacts a statute, “it is presumed that ... [a] result feasible of execution is intended”); *Webster’s New World College Dictionary* 530 (5th ed. 2014) (defining “feasible” as “capable of being done or carried out; practicable; ... within reason; likely or probable”).

Thus, to give effect to all relevant statutes and render the statutory scheme feasible of execution, we interpret R.C. 505.24 as establishing a maximum authorized salary provided to a township trustee for his or her services, exclusive of the value of fringe benefits paid on the trustee’s behalf. Fringe benefits are separate and apart from the trustee’s salary and do not factor into calculating a trustee’s maximum salary under the statute. Although the term “compensation” may include both salary and the value of fringe benefits paid on behalf of a township trustee by the township for the purpose constitutional prohibition against in-term compensation or salary changes under Ohio Const. art. II, § 20, *see Artmayer v. Bd. of Trustees of Delhi Twp.*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) (syllabus), “compensation” does not include the value of fringe benefits for the purpose of the maximum authorized salary amounts under R.C. 505.24.

Therefore, we conclude that the maximum dollar amounts set forth in R.C. 505.24 apply to the salary that a township trustee may receive on a per diem or annual basis. Cash payments received by a township trustee in lieu of health insurance benefits paid on behalf of the trustee are fringe benefits that do not factor into the maximum authorized per diem payments or annual salary that a trustee may receive under R.C. 505.24. *See* 2016 Op. Att’y Gen. No. 2016-020, at 2-215 to 2-216 (payment of health insurance premiums are not part of municipal court judges’ compensation under R.C. 1901.11 because division (E) of that statute expressly states that insurance premium payments paid on the judges’ behalf by a governmental entity do not constitute compensation); *see also* R.C. 141.04(G)(2) (the salary for justices of the supreme court, judges of the courts of appeals, judges of the common pleas courts, and judges of the municipal courts, “does not include any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination of those benefits ... paid on the [justices’ or judges’] behalf by a governmental entity”). Accordingly, a township trustee currently receiving the maximum authorized salary under R.C. 505.24 may elect to receive cash payments in lieu of benefits under a cafeteria plan established pursuant to R.C. 505.603 without violating the maximum authorized salary amounts under R.C. 505.24, so long as the board of township trustees offered such payments to township trustees prior to the commencement of the trustee’s current term in office.

One final matter merits discussion. As noted above, for the purpose of the prohibition against in-term compensation changes under Ohio Const. art. II, § 20, compensation may include both salary and the value of fringe benefits paid on a public officer’s behalf. *See State ex rel. Artmayer v. Bd. of Trustees of Delhi Twp.*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) (syllabus); *see also* 2018 Op. Att’y Gen. No. 2018-017, slip op. at 1 n.1 (for the purpose of Ohio Const. art. II, § 20, “[i]t is well established that the provision of health insurance, as a fringe benefit, is a part of an officer’s compensation”). If either salary or fringe benefits are increased or decreased during the term of an officer, then such change risks running afoul of Ohio Const. art. II, § 20. At the same time, R.C. 505.24 also employs the terms “salary” and “compensation.” The statute declares that “each township

trustee is entitled to *compensation* in an amount for each day of service in the business of the township” based on the size of the township’s budget. R.C. 505.24(A) (emphasis added). The statute also authorizes a board of township trustees to pay township trustees on a per diem basis or “by annual *salary* to be paid in equal monthly installments.” R.C. 505.24(D) (emphasis added). Therefore, one might reasonably question whether the term “compensation” includes both salary and the value of fringe benefits paid on behalf of a township trustee by the township for the purpose of R.C. 505.24, as it does for the purpose of Ohio Const. art. II, § 20.

For the reasons discussed above, however, the maximum authorized salary of a township trustee established pursuant to R.C. 505.24 does not include the value of fringe benefits paid on behalf of the trustee by the township. The General Assembly is presumed to have knowledge of prior legislation when it enacts subsequent legislation. *State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235 (1979). R.C. 505.60-.603, authorizing a board of township trustees to provide insurance benefits to township officers and employees, were enacted after R.C. 505.24. *See* 1999-2000 Ohio Laws, Part II, 3654, 3655 (Am. Sub. H.B. 379, eff. Sept. 5, 2000) (enacting R.C. 505.603, authorizing cash payments in lieu of insurance benefits to township officers and employees); 1999-2000 Ohio Laws, Part I, 1213, 1238 (Am. Sub. H.B. 187, eff. Sept. 20, 1999) (enacting R.C. 505.601, authorizing a board of township trustees that does not procure health care benefits for its officers or employees to reimburse a township officer or employee the cost of out-of-pocket premiums the officer or employee incurs); 1975-1976 Ohio Laws, Part I, 1501, 1501 (H.B. 80, eff. Apr. 28, 1976) (amending R.C. 505.60 to authorize a board of township trustees to provide group life insurance coverage to “full-time employees of the township,” the current version of which is located at R.C. 505.602); 1967-1968 Ohio Laws, Part II-III, 2688, 2688 (Am. Sub. H.B. 586, eff. Nov. 24, 1967) (enacting R.C. 505.60, authorizing a board of township trustees to provide various types of group insurance coverage to township officers and employees); *see also* 1955-1956 Ohio Laws, 1154, 1155 (H.B. 922, eff. Oct. 6, 1955) (amending existing R.C. 505.24 to modify the authorized salary amounts for township trustees). Thus, it would be unreasonable for the General Assembly to authorize a board of township trustees to provide and pay for insurance benefits for its township officers if the term “salary” as used in R.C. 505.24 included both salary and the value of insurance benefits paid on behalf of a township trustee. Such a situation would mean that many, if not most, townships would be unable to pay the cost of insurance benefits for township trustees without those trustees violating the maximum authorized salary amounts established under R.C. 505.24. Such result could not have been intended by the General Assembly. *See City of Canton v. Imperial Bowling Lanes, Inc.*, 16 Ohio St. 2d 47, 242 N.E.2d 566 (1968) (syllabus, paragraph 4) (“[t]he General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences” and “if the language of a statute fairly permits or unless restrained by the clear language thereof,” the statute must be construed so as to avoid unreasonable or absurd consequences); R.C. 1.47(C) (when the General Assembly enacts a statute, “it is presumed that . . . [a] just and reasonable result is intended”).

Accordingly, although “compensation” as used in Ohio Const. art. II, § 20 may include both salary and the value of fringe benefits paid on behalf of a township trustee by the board of township trustees, we conclude that the value of such benefits paid on behalf of a trustee does not factor into the trustee’s salary for the purpose of the maximum authorized salary amounts under R.C. 505.24.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a township trustee currently receiving the maximum authorized salary under R.C. 505.24 may accept payments from a cash payment in lieu of benefit plan established pursuant to R.C. 505.603 without violating the maximum salary restrictions under R.C. 505.24 or the prohibition against in-term compensation changes under Ohio Const. art. II, § 20, so long as the cash payment in lieu of benefit plan was established prior to the commencement of the trustee's current term in office.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with a long horizontal stroke at the end.

MICHAEL DEWINE
Ohio Attorney General