

OPINION NO. 81-082**Syllabus:**

The board of county commissioners, or the director of the county welfare department with the approval of the board of county commissioners, may award county welfare department employees dental and eye care insurance, where the entire cost of the premium will be reimbursed by the State Department of Public Welfare, even though no other county employees will receive a similar benefit. (1974 Op. Att'y Gen. No. 74-055, overruled.)

To: Richard G. Ward, Ross County Pros. Atty., Chillicothe, Ohio
By: William J. Brown, Attorney General, December 7, 1981

I have before me your opinion request in which you ask whether a board of county commissioners may provide dental and eye care insurance, the cost of which will be reimbursed one hundred percent by the State Department of Public Welfare, for county welfare department employees, when such insurance benefits would be superior to those afforded other county employees.

Pursuant to R.C. 329.02, the director of the county welfare department, with the approval of the board of county commissioners, "shall appoint all necessary assistants, superintendents of institutions under the jurisdiction of the department, and all other employees of the department, excepting that the superintendent of each such institution shall appoint all employees therein. The assistants and other employees of the department shall be in the classified civil service, and may not be placed in or removed to the unclassified service." County welfare department employees may, therefore, be considered county employees. See Madden v. Bower, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969) (assumes that county welfare department employees are entitled to be covered by an insurance plan procured for county officers and employees pursuant to R.C. 305.171). See also 1980 Op. Att'y Gen. No. 80-007 (describes county welfare department employees as county employees).

R.C. 305.171, concerning group insurance for county officers and employees, reads, in part, as follows:

(A) 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 for hospitalization, surgical care, major medical care, disability, dental care, eye care, . . . and that may provide 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 from the funds or budgets from which said officers or employees are compensated for services. . . . (Emphasis added.)

Pursuant to this section, the board of county commissioners may procure dental and eye care insurance for county officers and employees with moneys from the funds or budgets from which the officers or employees are compensated. It is clear, therefore, that the board of county commissioners may provide dental and eye care insurance for employees of county welfare departments.

In 1974 Op. Att'y Gen. No. 74-055, I concluded that R.C. 305.171 did not authorize the board of county commissioners to purchase dental care insurance for county officers or employees and their dependents. Since issuance of that opinion, R.C. 305.171 was amended to include dental care as one type of insurance which the county may provide for its employees and officers. See 1977-1978 Ohio Laws,

vol. I, 785 (Sub. S.B. 239, eff. Aug. 18, 1978). Based on the amended language of R.C. 305.171, I hereby overrule 1974 Op. Att'y Gen. No. 74-055.

Your specific question is whether the board of county commissioners may provide dental and eye care insurance for county welfare department employees when such insurance is superior to that afforded other county employees. R.C. 305.171, itself, does not require the county to provide a single insurance plan covering all county officers and employees in the same manner. See 1980 Op. Att'y Gen. No. 80-030, at 2-128 ("R.C. 305.171 itself does not disclose any requirement that the benefits accorded thereunder be provided on a uniform basis to all employees"). See also 1978 Op. Att'y Gen. No. 78-029, at 2-70 ("the county office holders enumerated in R.C. 325.27 are, under the terms of R.C. 325.17, empowered to authorize [the payment of medical insurance premiums] on behalf of their employees. The payment of such premiums is not conditioned upon the concurrent action of the board of county commissioners granting similar benefits to other county employees").

Any distinction in benefits awarded by the county commissioners must, however, comport with the equal protection guarantees of Ohio Const. art. I, §2 and the fourteenth amendment of the United States Constitution. In order to determine whether the county's action in allowing county welfare department employees to receive insurance benefits superior to those awarded other county workers violates the equal protection provisions of the Ohio or United States Constitution, it is necessary to look at the classification of employees with respect to this benefit. In the situation you present, the county would be dividing its workers into two classes: county welfare department employees, who would be entitled to the benefit, and all other county officers and employees, who would not be entitled to the benefit.

The test as to whether such classification comports with equal protection is whether there is a reasonable basis for such classification. Berenguer v. Dunlavy, 352 F. Supp. 444, 447 (D. Delaware 1972), vacated as moot, 414 U.S. 895 (1973) ("[w]hile a state has discretion in the selection of the privileges and rights it will confer on different classes of employees, the classification chosen must be reasonable"). It is my understanding that, in the situation you pose, the classification would be based on the fact that the State Department of Public Welfare will reimburse the entire premium for the dental and eye care insurance the county would provide its county welfare department employees. Although I am, of course, unable to predict whether a court would find such classification to be reasonable, it would appear that, because an employer generally extends fringe benefits to employees as an inducement to remain in his employ, it would be reasonable for an employer to grant any of his employees any benefit which imposes no additional cost upon the employer.²

I must also note that there is authority outside of R.C. 305.171 which would enable county welfare department employees to receive the benefits in the situation you pose. As noted above, R.C. 329.02 authorizes the director of the

¹See generally Kinney v. Kaiser Aluminum and Chemical Corp., 41 Ohio St. 2d 120, 123, 322 N.E.2d 880, 882 (1975) ("[t]he limitations placed upon governmental action by the Equal Protection Clause of the Ohio and United States Constitutions are essentially identical").

²See generally Madden, supra, at 137 ("[t]he purpose of an employer, whether public or private, in extending 'fringe benefits' to an employee is to induce that employee to continue his current employment").

county welfare department, with the approval of the board of county commissioners, to appoint necessary employees.³ Pursuant to his power to appoint, subject to the approval of the board of county commissioners, the director has the power to fix the compensation, including fringe benefits, of the department's employees, subject to any constricting statutory authority. See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). See also 1981 Op. Att'y Gen. No. 81-052. Because the director's power to appoint employees is subject to the approval of the county commissioners,⁴ it follows that the director's power to fix the compensation of the department's employees is also subject to the county commissioners' approval.

Several components of county welfare department employees' compensation are specifically governed by statute. R.C. 124.14(F) states that:

Employees of each county welfare department shall be paid a salary or wage in accordance with the rates set forth in [R.C.124.15] and progress in their employment pursuant to divisions (E), (F), and (G) of section 124.15 and section 124.181 of the Revised Code. The provisions of section 124.18 of the Revised Code concerning the standard work week shall also be applicable to employees of county departments of welfare.

It appears, therefore, that R.C. 124.14(F) restricts the power to compensate county welfare department employees in the area of salary and work hours. See 1967 Op. Att'y Gen. No. 67-094. Since county welfare department employees are county employees, their sick leave benefits are subject to the provisions of R.C. 124.38. Vacation benefits of county welfare department employees are governed by R.C. 121.161 ("[n]otwithstanding section 325.19 of the Revised Code, county welfare employees shall receive vacation benefits as provided in this section"). See 1974 Op. Att'y Gen. No. 74-085.

In the area of dental and eye care insurance, there is no statute granting a specific benefit to county welfare department employees. R.C. 124.82 provides that the State Employee Compensation Board shall contract periodically for health, medical, hospital, dental, or surgical benefits for "state employees who are paid directly by warrant of the auditor of state, including elected state officials." This section does not, however, apply to county welfare department employees.

As discussed above, the director of the county welfare department has the power to fix the compensation, including fringe benefits, of the department's employees, subject to approval of the board of county commissioners and to any other constricting statutory authority. Clearly, dental and eye care insurance is a fringe benefit. See Madden v. Bower, 20 Ohio St. 2d 135, 254 N.E. 2d 357 (1969). The director of the county welfare department, subject to the county

³R.C. 329.02 also empowers the superintendent of each institution under the jurisdiction of the department to appoint the employees of the institution. The discussion of the powers of the director of the county welfare department, with approval of the county commissioners, as an appointing authority, therefore, applies equally to the superintendents of such institutions as the appointing authorities of their employees.

⁴1956 Op. Att'y Gen. No. 6316, p. 152, syllabus ("[t]he power to appoint all necessary assistants and employees of a county department of welfare, except employees of institutions within the department, has been granted jointly to the director of the department and the board of county commissioners, by virtue of the provisions of Section 329.02, Revised Code").

commissioners' approval, may, therefore, grant such benefit to his employees as part of their compensation. See 1981 Op. Att'y Gen. No. 81-052. Because R.C. 305.171 allows the county commissioners to purchase this insurance for all county officers and employees, it is necessary to determine whether the statute in any way limits the power of the director, subject to the county commissioners' approval, to give department employees this benefit. See Op. No. 81-052, at 2-203 ("[a] statutory provision represents a potential source of constricting authority relative to the provision of a particular fringe benefit only if it directly addresses such benefit").

R.C. 305.171 allows the board of county commissioners to "contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies" (emphasis added). Because the statute authorizes the county to provide insurance policies for county employees, it does not appear that the board of county commissioners must adopt a uniform policy applicable to all county employees. See Op. No. 80-030. In Op. No. 78-029, I concluded that county officers could authorize the payment of insurance premiums on behalf of their employees and that the county commissioners were required to pay such premiums whether or not similar benefits were also granted to other county employees. See Op. No. 80-030. While R.C. 305.171 directly addresses the fringe benefit under consideration, the statute does not appear to restrict an individual appointing authority's power to provide a superior benefit to its employees. I note, however, that in regard to county welfare department employees, the power to award fringe benefits is vested in the director, subject to the approval of the board of county commissioners. The director's determination that the department's employees should receive dental and eye care insurance is, therefore, subject to the commissioners' approval.

Once the county commissioners have decided to grant dental and eye care insurance to county welfare department employees, or once the county commissioners have approved the director's determination that county welfare department employees should receive such benefits, such benefits may be provided by the county commissioners "from the funds or budgets from which said. . . employees are compensated for services." R.C. 305.171. See Op. No. 78-029. In the situation you pose, however, it is my understanding that the cost of such premiums would be reimbursed by the State Department of Public Welfare.

It is, therefore, my opinion, and you are advised, that the board of county commissioners, or the director of the county welfare department with the approval of the board of county commissioners, may award county welfare department employees dental and eye care insurance, where the entire cost of the premium will be reimbursed by the State Department of Public Welfare, even though no other county employees will receive a similar benefit. (1974 Op. Att'y Gen. No. 74-055, overruled.)