

**OPINION NO. 77-095****Syllabus:**

Members of the State Board of Education are elected state officials paid by warrant of the Auditor of State and are, thus, included within the class of state employees eligible for state life and health insurance programs pursuant to R.C. 124.81 and R.C. 124.82.

---

**To: Franklin B. Walter, Supt. of Public Instruction, Columbus, Ohio**  
**By: William J. Brown, Attorney General, December 19, 1977**

I have before me your request for my opinion which reads as follows:

A question has arisen as to whether or not members of  
the State Board of Education are eligible for

January 1978 Adv. Sheets

participation in state health insurance plans and state group life insurance programs. Accordingly, I should appreciate your opinion on whether, under the provisions of Sections 124.81 and 124.82, R.C., members of the State Board of Education may participate in state life and health programs.

R.C. 124.81 provides for group insurance programs, in pertinent part, as follows:

(A) The state employee compensation board in consultation with the Superintendent of insurance shall negotiate with, and, in accordance with competitive bidding procedures in Sections 125.04 to 125.15 of the Revised Code, contract with one or more insurance companies domiciled and authorized to do business in this State, for the issuance of either:

(1) A policy of group life insurance covering all state employees who are paid directly by warrant of the state auditor, including elected state officials; or

(2) A combined policy, or co-ordinated policies of one or more insurance companies or hospital service associations in combination with one or more insurance companies providing group life and health, medical, hospital, dental or surgical insurance, or any combination thereof, covering all such employees. (Emphasis added)

R.C. 124.82 provides for health insurance benefits for state employees, in part, as follows:

(A) The state employee compensation board, in consultation with the superintendent of insurance, shall, in accordance with competitive bidding procedures under sections 125.07 to 125.11 of the Revised Code, periodically contract with an insurance company or hospital service association, or other non-profit health plan, in combination with an insurance company, authorized to do business in this state, for the issuance of a policy or contract of health, medical, hospital, dental, or surgical benefits, or any combination thereof, covering state employees who are paid directly by warrant of the auditor of state, including elected state officials. The board may fulfill its obligation under this division by exercising its authority under division (A)(2) of section 124.81 of the Revised Code. (Emphasis added)

The benefits accorded by these statutory provisions thus are conferred upon all state employees paid directly by warrant of the Auditor of State, including elected state officials. Your question, therefore, requires an analysis of whether members of the State Board of Education fall within the class of state employees defined by R.C. 124.81 and R.C. 124.82.

R.C. 3301.11 creates the State Board of Education, which is comprised of one member elected from each congressional district created under R.C. 3521.01. R.C. 3301.07 specifies that the State Board of Education shall exercise, under the acts of the legislature, general supervision of the system of public education within the State of Ohio. Thus, while the individual members of the Board are elected by the voters of a district comprised of less than the full geographic area of the State, the Board as a body acts on behalf of the state as a whole.

A number of indicia of public office have been identified over the years, which include appointment or election in a manner prescribed by law, designation of title given by law, and the assignment by law of governmental functions concerning the public. State ex rel. Attorney General v. Wilson, 29 Ohio St. 347 (1876); State v. Brennan, 49 Ohio St. 33 (1892); State ex rel. Herbert v. Ferguson, 142 Ohio St. 496 (1944). In view of the provisions of R.C. Chapter 3301, it is apparent that the members of the State Board of Education are to be considered public officers. Moreover, in view of the statewide nature of the duties imposed on the Board, it is my opinion that the members of the Board must be considered elected state officers.

R.C. 3301.031, as most recently amended by Am. Sub. H.B. No. 1, effective August 26, 1977, provides for the compensation of members of the State Board of Education, in pertinent part, as follows:

Each member of the state board of education shall be paid a salary fixed pursuant to division (J) of Section 124.15 of the Revised Code, together with his actual and necessary expenses incurred while engaged in the performance of his official duties or in the conduct of authorized board business, and while en route to and from his home for such purposes.

R.C. 124.15(J) specifies that the Director of Administrative Services, with the approval of the State Employee Compensation Board, shall establish the rate and method of payment for members of boards and commissions. Payment pursuant to this provision is upon warrant of the Auditor of State.

Both R.C. 124.81 and R.C. 124.82 confer benefits upon all state employees, including elected state officials, paid directly by warrant of the Auditor of State. In light of the foregoing, it is my opinion, and you are so advised, that members of the State Board of Education are elected state officials paid by warrant of the Auditor of State and are, thus, included within the class of state employees eligible for state life and health insurance programs pursuant to R.C. 124.81 and R.C. 124.82.