

Note from the Attorney General's Office:

1968 Op. Att'y Gen. No. 68-140 was overruled by
1978 Op. Att'y Gen. No. 78-029.

OPINION NO. 68-140**Syllabus:**

The Board of County Commissioners has no authority to charge the cost of group medical insurance, procured and paid for under the authority of Section 305.171, Revised Code, against any fund other than the county general fund.

To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio
By: William B. Saxbe, Attorney General, September 23, 1968

Your request for my opinion states that the Board of County Commissioners has decided to furnish paid hospitalization and surgical insurance to all of the county employees pursuant to the authority granted by Section 305.171, Revised Code, and further that certain of the county employees are paid out of special tax levy funds rather than from the county general fund, to wit: employees of the County Engineer's office, County Child Welfare Department, County Board of Mental Retardation, County Hospital, County Welfare Department and Soldiers Relief Commission, and you ask whether the cost of the aforesaid insurance for these "independent" county employees should be charged against the county general fund or the special funds.

County officers, boards and departments are creatures of statute and have only such powers as are conferred by statute, or as are necessarily implied from those expressly granted. Such implied powers exist to the extent that they are essential as an incident to the very existence of the office, board or department or to the complete discharge of all of the powers, duties and obligations conferred upon them by law.

Section 305.171, Revised Code, to which you referred in your letter of request, was one of three sections enacted into law by Amended Substitute House Bill No. 586 (132 Ohio Laws,

S 586), effective November 24, 1967, the purpose of which was:

"* * * to permit boards of county commissioners, township trustees, and boards of park commissioners to pay all or part of the cost of group hospitalization, surgical, major medical, or sickness and accident insurance or any combination thereof for county and township officers and employees and park district employees and their dependents."

Section 305.171, Revised Code, was enacted to read as follows:

"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."

(Emphasis added)

As is seen from the above language, the legislature granted the boards of county commissioners the discretion not only to procure group medical insurance, but also the discretionary authority to pay all or any part of the cost of the group insurance so procured. Nowhere has the legislature yet granted the various county officers, boards or departments referred to in your letter of request the authority to pay all or any part of their employees' group medical insurance. Hence, the attempted procurement and payment of group medical insurance by the officers or directors of one or more of the offices, boards or departments named in your letter of request, in light of the existing statutory authority on the subject, would be without authority and illegal.

The Board of County Commissioners having elected to procure and pay all of the cost of the group medical insurance for all county employees, I find no express statutory authority enabling or authorizing said county commissioners to charge any part of the cost thereof against the appropriations or special tax levy funds of the offices, boards or departments for which these benefitted employees work. For these reasons the attempted charging of portions of the cost against special funds cannot be implied, and to do so would then be tantamount to a transfer of funds which is prohibited by Section 5705.14, Revised Code.

Furthermore, in view of the fact that it was the Board of County Commissioners that has determined to incur the permissive statutory expense, the cost of the paid group medical insurance would be a proper subject to be included in the county's levy for current expenses under the authority of Section 5705.19 (A), Revised Code. Accordingly, in light of these factors in addition to the lack of express statutory authority, I cannot imply the authority to charge any part of paid group medical insurance costs for the above-enumerated county employees against the special tax levy funds.

Therefore, it is my opinion and you are hereby advised that the Board of County Commissioners has no authority to charge the cost of group medical insurance, procured and paid for under the authority of Section 305.171, Revised Code, against any fund other than the county general fund.