

**OPINION NO. 78-064****Syllabus:**

Pursuant to R.C. 3501.17, a board of county commissioners is authorized to procure insurance to protect members of the board of elections from liability arising from the exercise of their official duties. However, the determination of whether such insurance is a "necessary and proper" expense of the board of elections is within the sound discretion of the board of county commissioners.

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**To: Ted W. Brown, Secretary of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, December 20, 1978**

I have before me your request for my opinion which raises the following question:

Is the premium cost for insurance for members of Boards of Elections, protecting them against liability arising from the performance of their official duties a "necessary and proper" expense of the Board under Section 3501.17 of the Revised Code?

R.C. 3501.17 provides, in pertinent part, as follows:

The expenses of the board of elections shall be paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in same

manner as other county expenses are made. If the board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board, such board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. . . .

Such board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. . . .

The entire compensation of the members of the board of elections and of the clerk, deputy clerk, and other assistants and employees in the board's offices . . . shall be paid in the same manner as other county expenses are paid . . . (Emphasis added.)

The compensation of members of the board of elections is determined by the population of the county in accordance with R.C. 3501.12. R.C. 3501.141 specifically allows the board of elections to purchase health and hospitalization insurance, and when so purchased, the county commissioners are required to pay the premiums. However, there is no specific statutory authorization for the purchase of the type of insurance which you describe.

Am. Sen. Bill No. 423, which became effective on May 2, 1978, added the following language to R.C. 307.441:

(E) The board of county commissioners of each county may procure a policy or policies of insurance insuring any county employee against liability arising from the performance of his official duties . . . (Emphasis added.)

The section specifically lists those county officials for whom the commissioners may purchase such insurance. Included are the recorder, treasurer, coroner, engineer, prosecuting attorney, auditor, sheriff, as well as the county commissioners themselves. However, no mention is made of the members of the Board of Elections, and under the maxim of statutory construction, expressio unius est exclusio alterius (the mention of one thing implies the exclusion of another) if must be presumed that the General Assembly did not intend to grant to county commissioners the authority to purchase such insurance for board members unless they can be said to be "county employees."

Members of the various boards of elections are appointed to four year terms by the Secretary of State. R.C. 3501.06. The duties of the board members are set forth by statute in R.C. 3501.11. The members are required to take an oath office. R.C. 3501.08. Accordingly, the Supreme Court specifically held that a member of the board of elections is an officer, and not an employee. State, ex rel Milburn, v. Pethel, 153 Ohio St. 1 (1950). In fact, the implication of Pethel is that board members are state officers rather than county officers. See also, 1968 Ops. Att'y Gen. No. 68-105. 1971 Ops. Att'y Gen. No. 71-085. Therefore, R.C. 307.441, as amended by Am. Sen. Bill No. 423 offers no authority whatsoever for the purchase of the liability insurance you describe for members of boards of election. If any authority exists for such an expenditure, it must be found in the "necessary and proper" clause of R.C. 3501.17, supra.

The "necessary and proper" clause of R.C. 3501.17 has not been the subject of much litigation. In State, ex rel. Ball, v. Board of County Commissioners, 159 Ohio St. (1943) it was held that the provision of R.C. 3501.17, which requires the county commissioners to pay amounts found necessary by the court of common pleas, is mandatory. Nevertheless, there was no discussion of what is "necessary and proper," since the expenditure involved was required to carry out a statutory

mandate. Moreover, while there have been previous opinions of this office on the "necessary and proper" clause, none has really analyzed the language with any refinement. It is clear that expenses required to fulfill a statutory duty of the board are "necessary and proper." Beyond those expenses, the system contemplated by R.C. 3501.17 depends largely upon the discretion of county commissioners, and ultimately upon the decision of the common pleas court. If the county commissioners determine that such premiums are "necessary and proper" they are authorized to make such payment. However, as such a determination is within the sound discretion of the commissioners, they can not be forced to procure such insurance unless ordered to do so by the court of common pleas.

Accordingly, it is my opinion, and you are so advised that:

Pursuant to R.C. 3501.17, a board of county commissioners is authorized to procure insurance to protect members of the board of elections from liability arising from the exercise of their official duties. However, the determination of whether such insurance is a "necessary and proper" expense of the board of elections is within the sound discretion of the board of county commissioners.