OPINION NO. 69-034

Syllabus:

The board of county commissioners is not authorized to expend public funds for the payment of premiums on a group hospitalization plan for public officers, as provided in Section 305.171, Revised Code, which plan would begin after the commencement of the existing statutory terms of such officers, since such expenditures would be in violation of Section 20, Article II, Ohio Constitution.

To: Lawrence S. Huffman, Allen County Pros. Atty., Lima, Ohio
By: Paul W. Brown, Attorney General, March 20, 1969

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

> "Does the Board of County Commissioners have the right, in light of the provisions of Article 2, Section 20 of the Ohio Constitution to expend public funds for the payment of premiums on a group hospitalization plan for public officers as provided in Section 305.171, Revised Code, which plan would begin after the commencement of the existing terms of said officers?"

You inform me that the board of county commissioners of your county now has such a group hospitalization plan under consideration for the employees and elected officials of the county and that the cost of the plan under consideration would be approximately $150.00 per person per year.

Section 305.171, Revised Code, concerning which you inquire, reads as follows:

> "The board of county commissioners of any county may procure and pay all or 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."

Section 20, Article II of the Ohio Constitution reads as follows:

> "The general assembly, in cases not pro-

vided 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 has been interpreted to apply only to those officers who serve for fixed statutory terms, and not to apply to those employees who serve at the pleasure of an appointing authority. Opinion No. 176, Opinions of the Attorney General for 1957. The provision clearly applies to a board of county commissioners, De Chant v. Kelser, 133 Ohio St. 429 (1938), although it does not apply to a county employee who serves at the pleasure of an appointing authority.

Further, Section 305.171, supra, is not unconstitutional on its face, the right to use public funds for the payment of all or part of the insurance premiums for public officers or employees having been recognized, 16 A.L.R. 1089, supp. 27 A.L.R. 1267, as long as statutory authority exists for the payment of premiums on the specific types of insurance coverage in question. See Opinion No. 5252, Opinions of the Attorney General for 1955. Such authority clearly exists in the instant case.

Your letter of request for my opinion indicates that you are aware of the foregoing basic considerations, and that your specific concern is the legality of making the premium payments permitted by Section 305.171, supra, for those county officers who have begun to serve their existing statutory terms at the time the proposed group hospitalization plan is to become effective. Where is has been permitted by law, as heretofore outlined, the payment of all or part of the insurance premiums on a group policy covering the officers and employees of a political subdivision of this state has been consistently regraded as part of the compensation of such officers or employees. See Opinion No. 4685, Opinions of the Attorney General for 1941. However, the precise question of whether such premium payments, if begun after an officer has entered upon an existing statutory term of office, are in violation of Section 20, Article II, supra, has not heretofore been raised. The answer to the question hinges on whether or not the words "salary" and "compensation", as used in this constitutional provision, are synonymous and may be used interchangeably. This matter has been considered on several occasions by both the courts of this state and this office, and the decisions on it have not been uniform. Opinion No. 978, Opinions of the Attorney General for 1951, page 827. The then Attorney General, in Opinion No. 387, Opinions of the Attorney General for 1945, after an exhaustive analysis of the cases and opinions construing this provision, concluded that the two words in question were used interchangeably. He concluded, as stated at page 478 of the opinion, that "what the Constitution prohibits is not a change in salary, but any action of the legislature either by changing the term or compensation which would affect the salary."

Later opinions issued by this office, notably Opinion No. 978, Opinions of the Attorney General for 1951, have distinguished Opinion No. 387, supra, but have not overruled it. As stated by the then Attorney General at page 835 of Opinion No. 978, supra:

"In summarization, it definitely appears that the framers of the Constitution of 1851 did not intend the terms 'salary' and 'compensation'

> to be used interchangeably or synonymously. However, I do not believe that the 1945 opinion of this office /Opinion No. 387, supra/ should be overruled. My reasoning for such conclusion is based upon the fact that in addition to the fees there involved, the county commissioners did receive a fixed salary. As heretofore pointed out in the cases of State ex rel. v. Raine /49 Ohio St. 580 (1892)/ and Lueders v. Beaman /106 Ohio St. 650 (1922)/, the officers there involved were not limited in their compensation to fees, but received, in addition thereto, such fixed salary. I conclude, however, that as to officers who do not receive any fixed salary, * * * the provisions of Article II, Section 20 of the Constitution do not preclude the General Assembly from increasing or decreasing * * * compensation during their terms of office."

The county commissioners in the instant case receive a fixed salary, as presumably do all other county officers to whom the proposed hospitalization plans would apply. I agree with the conclusion reached in Opinion No. 978, supra, that at least as regards an officer who receives a fixed salary, Opinion No. 387, supra, should not be overruled. Undoubtedly, the proposed premium payments on behalf of those county officers who come within the purview of Section 20, Article II, supra, would be an increase in their compensation, and would, in the words of Opinion No. 387, supra, "affect the salary" which they receive, in violation of this constitutional provision.

Therefore, it is my opinion and you are hereby advised that the board of county commissioners is not authorized to expend public funds for the payment of premiums on a group hospitalization plan for public officers, as provided in Section 305.171, Revised Code, which plan would begin after the commencement of the existing statutory terms of such officers, since such expenditures would be in violation of Section 20, Article II, Ohio Constitution.