

**OPINION NO. 84-030****Syllabus:**

A board of education may contract with a person or organization, whether or not an insurance company or hospital service association, to process all claims and perform other administrative services associated with a health insurance program for the board's employees, even though such entity is not providing the insurance coverage.

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**To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, May 31, 1984**

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

[Does] a board of education [have] the authority to enter into a

contract with a person or a private organization, whether or not an "insurance company or hospital service association," to perform administrative services including the processing of claims up to the predetermined maximum amount of claims for which the board of education would be directly responsible for health and medical benefits under a plan similar to that described in Ohio Attorney General's Opinion No. 81-045.

At the start, I note that boards of education, as creatures of statute, have only those powers which are expressly granted by statute or necessarily implied therefrom. See Schwing v. McClure, 120 Ohio St. 335, 166 N.E. 230 (1929).

Pursuant to R.C. 3313.202, a board of education has the authority to purchase health insurance issued by an insurance company or hospital association for board employees and their spouses and dependents. R.C. 3313.202 reads in part:

The board of education of a school district may procure and pay all or part of the cost of group term life, hospitalization, surgical, or major medical insurance, or a combination of any of the foregoing types of insurance or coverage, whether issued by an insurance company or a hospital service association duly licensed by this state, covering the teaching or nonteaching employees of the school district, or a combination of both, or in the case of hospitalization, surgical, or major medical insurance, the dependent children and spouses of such employees. . . .

R.C. 9.90(A)(1) also states that a board of education may:

Contract for, purchase, or otherwise procure from an insurer or insurers licensed to do business by the state of Ohio for or on behalf of such of its employees as it may determine, life insurance, or sickness, accident, annuity, endowment, health, medical, hospital, dental, or surgical coverage and benefits, or any combination thereof, by means of insurance plans or other types of coverage, family, group or otherwise, and may pay from funds under its control and available for such purpose all or any portion of the cost, premium, or charge therefor.

In 1981 Op. Att'y Gen. No. 81-045, my predecessor construed R.C. 9.90 and R.C. 3313.202 with regard to the type of insurance plan to which you refer in your letter of request. Op. No. 81-045 described this type of plan as follows:

Under the proposed plan, the policyholder board of education agrees to pay employee health and medical claim costs up to a predetermined maximum amount, which amount is calculated by reference to the "monthly attachment factor." In any given year, then, the board of education pays cumulative claim costs equal to the predetermined annual maximum amount and the insurance company pays those claim costs which exceed the maximum amount. All claims are processed by the insurance company. The insurance company, under the minimum premium plan, also guarantees the payment of all benefits described in the policy. The board of education pays the insurance company a monthly "minimum" premium payment for each employee for the administrative services of the insurance company and for coverage by the insurance company of those claim costs in excess of the predetermined maximum level.

Id. at 2-178. It was concluded that R.C. 9.90 and R.C. 3313.202 authorize a board of education "to provide health and medical insurance to its employees pursuant to an insurance plan which obligates the board to pay claim costs up to a predetermined definite level and under which the insurance company assumes the indeterminate risks inherent in the employee coverage." (Syllabus.) From your letter of request it is my understanding that you are concerned with the provision of administrative services associated with the type of insurance plan addressed in Op. No. 81-045.

Under the insurance plan considered in Op. No. 81-045, the insurance company providing coverage also provided all administrative services. All claims, including those up to the predetermined maximum amount for which the board would be responsible, as well as those claims exceeding the maximum amount paid by the insurance company, were processed by the insurance company. The board of education compensated the insurance company for these services. Although not expressly stated, R.C. 9.90 and R.C. 3313.202 were construed in Op. No. 81-045 as authorizing a board of education to contract with an insurance company for the processing of all claims and for other administrative services connected with the type of insurance plan described in that opinion, at least where the company providing these services was the same insurance company providing the specified coverage pursuant to contract with the board. Your question is broader, however, in that you wish to know whether a board of education may contract with any person or private organization to provide administrative services in connection with the above-described insurance plan, whether or not such entity is providing insurance coverage for the board, or indeed, whether or not the entity is an insurance company or hospital service association.

I note first that a board of education has the implied power to provide administrative services in connection with insurance coverage provided board employees pursuant to R.C. 9.90 or R.C. 3313.202. The processing of claims and the provision of other administrative services are essential to the actual provision of insurance coverage. An insurance program could not be operated without the accompaniment of such services. Thus, the board's power to provide administrative services in connection with an insurance plan may be implied from the board's express statutory authority to provide insurance. See Op. No. 81-045 (a board of education may contract with the company providing health insurance coverage to board employees to administer the insurance plan). See generally State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915) (a public official may do what is reasonably necessary to perform his statutory duties).

Since a board of education has authority to provide administrative services in connection with an insurance plan, it may hire employees to perform those functions necessary to the execution of these services. See R.C. 3319.02; R.C. 3319.03; R.C. 3319.081. See also 1981 Op. Att'y Gen. No. 81-036 (the duty to operate and maintain programs necessarily requires the employment of persons to staff the programs). In addition, to the extent that a board of education does not intend to thwart the purposes of the civil service system,<sup>1</sup> it may contract to have an independent contractor perform these administrative services.<sup>2</sup> See State ex rel. Sigall v. Aetna Cleaning Contractors of Cleveland, Inc., 45 Ohio St. 2d 308, 345 N.E.2d 61 (1976). See also Sovine v. Teater, 47 Ohio App. 2d 254, 353 N.E.2d 880 (Franklin County 1976); 1983 Op. Att'y Gen. No. 83-038 at 2-146 ("[t]he argument that R.C. 309.10 operates to authorize a board of education to employ counsel other than the city law director or prosecuting attorney applies equally to contracts with outside firms and to employment of 'in-house' counsel"); 1970 Op. Att'y Gen. No. 70-084; 1964 Op. Att'y Gen. No. 64-1066. R.C. 9.90 and R.C. 3313.202 limit the types of organizations with which a board of education may contract for insurance coverage. R.C. 9.90(A)(1) empowers a board of education to contract for various

<sup>1</sup> Only city school districts are under the civil service system, see R.C. 124.01(A), R.C. 124.11, and thus subject to this limitation on their power to contract with independent contractors.

<sup>2</sup> To the extent that a board of education is expressly prohibited from contracting out certain duties, or where it is apparent that the board must perform certain responsibilities itself or through its employees, it may not contract with an independent contractor to perform such duties. See State ex rel. Sigall v. Aetna Cleaning Contractors of Cleveland, Inc., 45 Ohio St. 2d 308, 345 N.E.2d 61 (1976); 1983 Op. Att'y Gen. No. 83-027; 1981 Op. Att'y Gen. No. 81-002. I am unaware of any express or implied prohibition against a board of education contracting out the performance of administrative services in connection with an insurance plan.

types of health insurance with "an insurer or insurers licensed to do business by the state of Ohio." R.C. 3313.202 authorizes a board of education to procure types of health insurance "whether issued by an insurance company or a hospital service association duly licensed by this state." A contract for the administration of an insurance plan, however, does not in itself constitute a contract of insurance. See State ex rel. Duffy v. Western Auto Supply Co., 134 Ohio St. 163, 168, 16 N.E.2d 256, 258 (1938) (an insurance contract is "a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency"). Thus, the restrictions of R.C. 9.90 and R.C. 3313.202 as to the types of organizations with which a board of education may contract do not apply to contracts for the administration of an insurance program. I am unaware of any other restrictions which would apply to limit the types of organizations with which a board of education may contract for administrative services in connection with an insurance program. There is no requirement that those administrative services must be provided by the insurance company with which the board has contracted for insurance coverage. Thus, I conclude that a board of education may contract with a person or organization, whether or not an insurance company or hospital service association, to process all claims and perform other administrative services associated with a health insurance program for the board's employees, even though such entity is not providing the insurance coverage.

In your letter of request, you have stated that 1983 Op. Att'y Gen. No. 83-076 construed the authority of a board of education to expend funds for consultant services pursuant to R.C. 3313.171. This statute states: "A board of education may expend funds for consultant services for any purpose related to the business administration of the school district, and this authority is in addition to any power, expressed or implied, granted to a board of education by statute or otherwise prior to September 24, 1963." In Op. No. 83-076, I concluded that R.C. 3313.171 empowered a board of education to contract with a consultant to audit the cost of workers' compensation claims and insurance charged to the school district. The purpose of this contract was to enable the board to fulfill its duties imposed under R.C. Chapter 4123 with respect to the provision of workers' compensation. A consultant is "an expert who is called on for professional or technical advice or opinions." 1980 Op. Att'y Gen. No. 80-067 at 2-267 (citing Webster's New World Dictionary 305 (2d college ed. 1978)). See 1981 Op. Att'y Gen. No. 81-040. A consultant may be called upon to render his expert advice or opinion on a certain responsibility or task, but, in the process of consulting, he does not actually perform the duty or task himself. See 1983 Op. Att'y Gen. No. 83-013. I believe that R.C. 3313.171 would empower a board of education to contract with a consultant to advise the board as to administrative services associated with an insurance program, since the provision of a health insurance program for board employees is properly part of the board's responsibilities, and services related to the maintenance and provision of a health insurance program may be classified as part of the business administration of the school district, see 1977 Op. Att'y Gen. No. 77-098. I do not believe, however, that R.C. 3313.171 empowers a board to contract with an individual or organization to actually perform the administrative services associated with an insurance program.

In conclusion, it is my opinion, and you are advised, that a board of education may contract with a person or organization, whether or not an insurance company or hospital service association, to process all claims and perform other administrative services associated with a health insurance program for the board's employees, even though such entity is not providing the insurance coverage.