

Note from the Attorney General's Office:

1990 Op. Att'y Gen. No. 90-053 was modified by
2005 Op. Att'y Gen. No. 2005-038.

OPINION NO. 90-053**Syllabus:**

R.C. 505.60 does not empower a board of township trustees to reimburse a township officer, who was denied coverage by the township's regular health insurance carrier, the cost of the trustee's independently obtaining health insurance coverage through her outside employment.

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 16, 1990

I have before me your opinion request concerning the provision of health care insurance for a township trustee pursuant to R.C. 505.60. By way of background, your opinion request states that the township's present health care insurance company has refused coverage to a newly-elected member of the board of trustees due to the permanent disability of a family member. The trustee does, however, maintain health care insurance for her family through her regular employer at a certain cost per month. The board of township trustees would like to pay to the trustee the cost of maintaining her health care insurance "so as to indirectly provide her with health care coverage as other township officials and employees receive."

In determining whether the board of township trustees may take the action you describe, I begin by noting that the board of township trustees "can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, in order to enable them to perform the duties imposed upon them." *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875). Further, since the action contemplated by the trustees involves the expenditure of public funds, it is necessary to find a clear and distinct grant of authority to make the expenditure. *See State ex rel. Locher v. Menning*, 95 Ohio St. 97 (1916). If the authority to make an expenditure of public funds is doubtful, the doubt is to be resolved against making the expenditure. *Id.*

The authority of township trustees to procure health care insurance for township officers and employees is set forth in R.C. 505.60, which states in part:

(A) The board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees. If the board so procures any such insurance policies, the board shall provide uniform coverage under these policies for township officers and full-time township employees and their immediate dependents and may provide coverage under these policies for part-time township employees and their immediate dependents, from the funds or budgets from which the officers or employees are compensated for services, whether such policies are issued by an

insurance company, a medical care corporation organized under [R.C. Chapter 1737], [or] a dental care corporation organized under [R.C. Chapter 1740] duly authorized to do business in this state. *Any township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers and employees.*

The board may also contract for group insurance or health care services with health care corporations organized under [R.C. Chapter 1738] and health maintenance organizations organized under [R.C. Chapter 1742] for township officers and employees. *If the board so contracts, it shall provide uniform coverage under any such contracts for township officers and full-time township employees and their immediate dependents and may provide coverage under such contracts for part-time township employees and their immediate dependents, provided that each officer and employee so covered is permitted to:*

(1) Choose between a plan offered by an insurance company, medical care corporation, or dental care corporation and a plan offered by a health care corporation or health maintenance organization, and *provided further that the officer or employee pays any amount by which the cost of the plan chosen by him exceeds the cost of the plan offered by the board under this section;*

(2) Change his choice under division (A) of this section at a time each year as determined in advance by the board. The board may provide the benefits authorized under this section, without competitive bidding, by contributing to a health and welfare trust fund administered through or in conjunction with a collective bargaining representative of the township employees. (Emphasis added.)

Concerning the operation of R.C. 505.60, I recently stated: "the express language of R.C. 505.60(A) must be viewed as a restriction upon the authority of a board of township trustees with respect to both the manner in which the board may provide health care insurance for township officers and employees, and the arrangements incidental thereto that the board may undertake." 1989 Op. Att'y Gen. No. 89-009 at 2-36. Based upon the language of R.C. 505.60, I concluded in Op. No. 89-009, that a board of township trustees may not make monetary payments or grant increased compensation to township officers and employees as a means of reimbursing those persons for deductible payments incurred in connection with health care insurance policies provided under R.C. 505.60(A).

The situation about which you ask involves payment by the board of township trustees directly to an individual trustee as reimbursement for health care insurance obtained by the trustee through her outside employment. Nothing in R.C. 505.60 empowers a board of township trustees to make the type of payment you describe. Pursuant to R.C. 505.60(A), the board of township trustees is empowered essentially to "*procure and pay all or any part of the cost of insurance policies [of certain types]...for township officers and employees*" or to "*contract for group insurance or health care services with health care corporations...and health maintenance organizations...*" (Emphasis added.) Nothing in R.C. 505.60, however, authorizes the board to reimburse a township officer the cost of otherwise obtaining health care insurance for herself. See Op. No. 89-009; 1982 Op. Att'y Gen. No. 82-076 (syllabus) ("*[a] board of township trustees may not expend township funds to pay the medical claims of its officers and employees that were incurred during a period in which there was an interruption in the medical insurance coverage provided pursuant to R.C. 505.60 due to the bankruptcy of the insurer*").

I note, however, that although the board of township trustees is without authority to reimburse the township trustee the cost of her independently obtained health insurance, the board may have another alternative. As I concluded in the syllabus of 1984 Op. Att'y Gen. No. 84-086: "If a board of township trustees chooses, pursuant to R.C. 505.60, to procure for its officers or employees any of the health insurance benefits described therein, the board must provide uniform coverage for all township officers and employees and their immediate dependents...." In reaching this conclusion, I discussed the requirement of uniformity in coverage imposed by R.C. 505.60, as follows:

[T]his language must be viewed as a restriction on the authority of a board of township trustees to procure health benefits. If a board of township trustees chooses, pursuant to R.C. 505.60, to provide any of the benefits described in that section, it must comply with the language of that section. R.C. 505.60 does not permit distinctions to be drawn among groups of officers and employees, even if the persons within each group are similarly situated. Rather, the word "uniform" must be given its ordinary meaning: "consistent in action, intention, effect, etc. [a *uniform* policy]." *Webster's New World Dictionary* 1551 (2d college ed. 1978). *Every township officer and employee who receives health insurance benefits under R.C. 505.60 is entitled, under the language of that section, to receive benefits which are uniform with respect to those granted to every other officer and employee under that section.* (Emphasis added; citations omitted.)

Op. No. 84-086 at 2-296. R.C. 505.60 thus requires uniformity in coverage for all township officers, employees and their immediate dependents, unless a particular officer or employee elects not to participate in the plan. R.C. 505.60 also authorizes the board of trustees to obtain more than one policy of insurance, so long as the coverage made available to all township officers and employees is uniform. Similarly, where the board contracts for group insurance or health care services with health care corporations and health maintenance organizations, R.C. 505.60(A) authorizes the board to enter into more than one such contract, so long as uniform coverage is available to all township officers and employees and so long as the other requirements of R.C. 505.60(A) are met. Thus, it appears to be within the power of the board of township trustees to obtain separately the same health insurance benefits for the trustee who was denied coverage by the township's regular insurance carrier, so long as the coverage obtained is uniform with that provided other township officers and employees. *See generally* 1989 Op. Att'y Gen. No. 89-003 (syllabus, paragraph two) ("[t]he payment of an increase in the premium cost of a group insurance policy for an elected county officer and his immediate dependents does not violate the prohibition of Ohio Const. art. II, §20, against an in-term increase of compensation of county elected officers, provided that the benefits procured are unchanged, and the total percentage of the entire premium cost paid by the board of county commissioners remains the same").

Based on the foregoing, it is my opinion, and you are hereby advised, that R.C. 505.60 does not empower a board of township trustees to reimburse a township officer, who was denied coverage by the township's regular health insurance carrier, the cost of the trustee's independently obtaining health insurance coverage through her outside employment.