

OPINION NO. 2003-036

Syllabus:

A board of elections that qualifies as a small employer, as defined in R.C. 1731.01(J), may procure group medical insurance under R.C. 3501.141 for its members and full-time employees through a chamber of commerce that is a small employer health care alliance certified pursuant to R.C. 1731.021 to sponsor an alliance health care program.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Jim Petro, Attorney General, November 10, 2003

You have requested an opinion concerning the authority of a board of elections to provide group medical insurance for its members and employees. You indicate that a chamber of commerce organized as a nonprofit corporation sponsors an alliance health care program under R.C. Chapter 1731. The board of elections would like to obtain medical insurance coverage through a health benefit plan offered by an insurer under the alliance health care program. Accordingly, you wish to know whether a board of elections "may join and pay a membership fee to a qualified Chamber of Commerce (under Ohio Revised Code § 1731.01 et. seq.) for the sole purpose of obtaining health insurance coverage which would yield a substantial savings to [the board of elections and county]."

Small Employer Health Care Alliances

In order to understand your question, it is first necessary to set forth the following background information. R.C. Chapter 1731 provides for the creation of small employer health care alliances to sponsor alliance health care programs. For purposes of R.C. Chapter 1731, "small employer health care alliance" is defined as follows:

(A) "Alliance" or "small employer health care alliance" means *an existing or newly created organization that has been granted a certificate of authority [to sponsor an alliance health care program] by the superintendent of insurance under [R.C. 1731.021]*¹ and that is either of the following:

(1) A *chamber of commerce*, trade association, professional organization, or any other organization *that has all of the following characteristics:*

(a) Is a nonprofit corporation or association;

(b) Has members that include or are exclusively small employers;²

(c) Sponsors or is part of a program to assist such small employer members to obtain coverage for their employees under one or more health benefit plans;

(d) Except as provided in division (A)(1)(e) of this section, is not directly or indirectly controlled, through voting membership, representation on its governing board, or otherwise, by any insurance company, person, firm, or corporation that sells insurance, any provider, or by persons who are officers, trustees, or directors of such enterprises, or by any combination of such enterprises or persons.

(e) Division (A)(1)(d) of this section does not apply to an organization that is comprised of members who are either insurance agents or providers, that is controlled by the organization's members or by the organization

¹R.C. 1731.021 authorizes the Superintendent of Insurance to issue to an organization a certificate of authority to sponsor an alliance health care program.

²A "[s]mall employer," for purposes of R.C. Chapter 1731, is "an employer that employs no more than one hundred fifty full-time employees, at least a majority of whom are employed at locations within this state." R.C. 1731.01(J).

itself, and that elects to offer health insurance exclusively to any or all of the following:

- (i) Employees and retirees of the organization;
- (ii) Insurance agents and providers that are members of the organization;
- (iii) Employees and retirees of the agents or providers specified in division (A)(1)(e)(ii) of this section;
- (iv) Families and dependents of the employees, providers, agents, and retirees specified in divisions (A)(1)(e)(i), (A)(1)(e)(ii), and (A)(1)(e)(iii) of this section.

(2) A nonprofit corporation controlled by one or more organizations described in division (A)(1) of this section. (Emphasis and footnotes added.)

R.C. 1731.01(A). Thus, an existing or newly created chamber of commerce that has been granted a certificate of authority to sponsor an alliance health care program and that has all of the characteristics set forth in R.C. 1731.01(A)(1) or (2) is a "small employer health care alliance" for purposes of R.C. Chapter 1731.

Any chamber of commerce that is a "small employer health care alliance," as defined by R.C. 1731.01(A), and "otherwise conforms to the applicable conditions and provisions of [R.C. Chapter 1731] is entitled to all applicable benefits under this chapter." R.C. 1731.02(C). Accordingly, a chamber of commerce that is a small employer health care alliance may, *inter alia*, sponsor an alliance health care program. See R.C. 1731.03; see also R.C. 1731.01(B). An "alliance health care program" is defined in R.C. 1731.01(B) as follows:

'Alliance program' or 'alliance health care program' means a program sponsored by a small employer health care alliance that assists small employer members of such small employer health care alliance or any other small employer health care alliance to obtain coverage for their employees under one or more health benefit plans,³ and that includes at least one agreement between a small employer health care alliance and an insurer⁴ that contains the insurer's agreement to offer and sell one or more health benefit plans to such small employers and contains all of the other features required under [R.C. 1731.04]. (Footnotes added.)

In conjunction with sponsoring an alliance health care program, a chamber of commerce that is a small employer health care alliance may "[n]egotiate and enter into agreements with one or more insurers for the insurers to offer and provide one or more

³As used in R.C. Chapter 1731, "[h]ealth benefit plan" means "any hospital or medical expense policy of insurance or a health care plan provided by an insurer, including a health insuring corporation plan." R.C. 1731.01(E). Health benefit plans offered and sold to small employer members of a small employer health care alliance are subject to the provisions of R.C. 3924.01-.14. R.C. 1731.03(E).

⁴For purposes of R.C. Chapter 1731, an "[i]nsurer" is "an insurance company authorized to do the business of sickness and accident insurance in this state or, for the purposes of [R.C. Chapter 1731], a health insuring corporation authorized to issue health care plans in this state." R.C. 1731.01(F).

health benefit plans to small employers for their employees and retirees, and the dependents and members of the families of such employees and retirees.” R.C. 1731.03(A)(1); *see also* R.C. 1731.01(B); R.C. 1731.04. Thus, a chamber of commerce that is a small employer health care alliance, as defined by R.C. 1731.01(A), may offer and provide one or more health benefit plans to small employers that are members of the chamber of commerce.

Board of Elections’ Membership in a Chamber of Commerce

We must now determine whether a board of elections may be a member of a chamber of commerce that is a small employer health care alliance certified to sponsor an alliance health care program, in order to procure group medical insurance for board members and employees through such alliance. This requires that we examine the statutory authority of a board of elections to procure group medical insurance for its members and employees. If such authority is found, a determination must be made whether the procurement of group medical insurance through a small employer health care alliance is a reasonable method by which a board of elections may procure such insurance, and, if it is, we must then determine whether any statute prohibits a board of elections from procuring the insurance in this manner. Finally, we will have to consider whether a public employer is able to qualify as a “small employer” under the pertinent provisions of R.C. Chapter 1731.

A board of elections is a creature of statute and has only those powers expressly provided by statute or as may exist by necessary implication. *Whitman v. Hamilton County Bd. of Elections*, 97 Ohio St. 3d 216, 2002-Ohio-5923, 778 N.E.2d 32, at ¶ 12; *State ex rel. Babcock v. Perkins*, 165 Ohio St. 185, 187, 134 N.E.2d 839 (1956). In accordance with this principle, a board of elections may be a member of a chamber of commerce that is a small employer health care alliance certified to sponsor an alliance health care program so long as there is express or implied authority for the board to do so.

Procurement of Group Medical Insurance for the Members and Full-time Employees of a Board of Elections

R.C. 3501.141 authorizes a board of elections to procure group medical insurance for its members and full-time employees from an insurance company or a health insuring corporation authorized to do business in this state. R.C. 3501.141 provides, in part:

(A) The board of elections of any county may contract, purchase, or *otherwise procure* and pay all or any part of the cost of group insurance policies that may provide benefits for hospitalization, surgical care, major medical care, ... medical care, ... prescription drugs, and that may provide sickness and accident insurance, ... or a combination of any of the foregoing types of insurance or coverage for the full-time employees of such board and their immediate dependents, whether issued by an insurance company or a health insuring corporation, duly authorized to do business in this state.

(B) The board of elections 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 the members appointed to the board of elections under [R.C. 3501.06] and their immediate dependents when each member’s term begins, whether issued by an insurance company or a health insuring corporation, duly authorized to do business in this state. (Emphasis added.)

R.C. 3501.141 thus expressly permits a board of elections to procure group medical insurance for its members and full-time employees from an insurance company or a health insuring corporation authorized to do business in this state.

“Where a statute clearly confers power to do a certain thing without placing any limitation as to the manner or means of doing it, and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption is that it should be performed in a reasonable manner not in conflict with any law of the state.” *State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 459, 166 N.E.2d 365 (1960) (emphasis omitted); *accord State ex rel. Attorney General v. Morris*, 63 Ohio St. 496, 512, 59 N.E. 226 (1900). In other words, when a public officer or body is statutorily authorized to perform a particular act, but is given no clear direction how to perform the act, the public officer or body “is naturally and necessarily vested with a wide discretion to do such incidental things as are reasonably and manifestly” in the public’s interests to perform the act, provided such things are not prohibited by statute. *Federal Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 541, 118 N.E. 103 (1917), *appeal dismissed*, 248 U.S. 547 (1919); *accord State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 11-12, 112 N.E. 138 (1915), *aff’d*, 241 U.S. 565 (1916). *See generally* 1984 Op. Att’y Gen. No. 84-066 at 2-214 (authority to provide insurance implies authority to provide administrative services in connection with insurance coverage).

With respect to your specific inquiry, nothing in R.C. 3501.141 or elsewhere in the Revised Code specifies the exact manner in which a board of elections is to procure group medical insurance for its members and full-time employees from an insurance company or a health insuring corporation authorized to do business in this state. A board of elections thus may procure such insurance in any manner that is reasonable and not otherwise prohibited by statute. *See State ex rel. Preston v. Ferguson; Federal Gas & Fuel Co. v. City of Columbus; State ex rel. Hunt v. Hildebrant; State ex rel. Attorney General v. Morris. See generally* 2003 Op. Att’y Gen. No. 2003-026, slip op. at 4 (“R.C. 505.602 does not prevent the board of township trustees from selecting any reasonable manner for procuring group life insurance, provided that the statutory restrictions are observed”).

We will now consider whether the procurement of group medical insurance through a small employer health care alliance is a reasonable manner by which a board of elections may procure such insurance. To reiterate, a chamber of commerce that is a small employer health care alliance, as defined by R.C. 1731.01(A), may offer and provide one or more health benefit plans to small employers that are members of the chamber of commerce. By enacting R.C. Chapter 1731, the General Assembly has determined that it is appropriate for employers to procure group medical insurance for their employees through small employer health care alliances. In fact, the General Assembly has expressly stated:

It is determined and declared that the provision of health care to employees and retirees in this state and to their dependents and families is of paramount public importance to the economic and general welfare of the people of the state, that rising costs of health care have made it difficult for small employers to provide for health care benefits, that the creation of alliances of small employers to bargain with insurers better assures the obtaining of adequate coverage and benefits under health benefit plans at affordable costs and that the larger the number of employees and other covered persons under such alliance, the more certain is the achievement of those objectives, and that *it is the public policy and a public purpose of the state to encourage alliances of small employers to obtain health benefit plans, and to permit flexibility in the coverage and benefits thereunder and*

encourage substantial size in such alliances, in order to enhance strength in bargaining and economics of scale and thereby achieve broader coverage and benefit options at reduced costs. (Emphasis added.)

R.C. 1731.02(A). The procurement of group medical insurance through small employer health care alliances thus is a reasonable manner by which employers may procure such insurance for their employees. *See generally* 1977 Op. Att’y Gen. No. 77-033 (syllabus) (“[a] township may join with the county in negotiations with an insurance company in order to procure a plan encompassing all county and township employees”). *See generally also* 2003 Op. Att’y Gen. No. 2003-026 (in procuring group life insurance, a township or county may participate in a joint arrangement with other political subdivisions). It follows, therefore, that a board of elections is permitted to procure such insurance for its members and full-time employees through a small employer health care alliance, provided such procurement is not otherwise prohibited by statute.

Compliance with R.C. 3501.141

In order to determine whether a board of elections’ procurement of group medical insurance through a small employer health care alliance is not otherwise prohibited by statute, we must examine various provisions of R.C. 3501.141, R.C. 1731.01(J), and R.C. Chapter 1702. R.C. 3501.141 requires a board of elections to procure group medical insurance for its members and full-time employees only through an insurance company or a health insuring corporation. Group medical insurance provided through health benefit plans sponsored by a chamber of commerce that is a small employer health care alliance is offered and sold by an “[i]nsurer.” *See* R.C. 1731.03(A)(1); *see also* R.C. 1731.01(B), (E); R.C. 1731.04(A)(1). For purposes of R.C. Chapter 1731, an “[i]nsurer” is an insurance company or a health insuring corporation authorized to do business in this state. R.C. 1731.01(F).

Accordingly, group medical insurance provided through a chamber of commerce that is a small employer health care alliance is procured from an insurance company or a health insuring corporation, not from the chamber of commerce. *See generally* R.C. 1731.04(C) (“[n]either an alliance program nor an agreement between an alliance and an insurer is itself a policy or contract of insurance, or a certificate, indorsement, rider, or application forming any part of a policy, contract, or certificate of insurance”). Thus, a board of elections complies with the terms of R.C. 3501.141 when it procures group medical insurance for its members and full-time employees through a small employer health care alliance.

Public Employer as a Small Employer for Purposes of R.C. Chapter 1731

Under R.C. Chapter 1731, only small employers are eligible to procure group medical insurance through small employer health care alliances. Accordingly, if an employer is not a “[s]mall employer” for purposes of R.C. Chapter 1731, the employer is not authorized to procure insurance through a small employer health care alliance.

For purposes of R.C. Chapter 1731, the term “[s]mall employer” is defined, in part, as follows:

“Small employer,” regardless of its definition in any other chapter of the Revised Code, in this chapter means an employer that employs no more than one hundred fifty full-time employees, at least a majority of whom are employed at locations within this state.

(1) For this purpose:

(a) Each entity that is controlled by, controls, or is under common control with, one or more other entities shall, together with such other entities, be considered to be a single employer.

R.C. 1731.01(J).

No language in this definition expressly excludes an employer that employs 150 or fewer full-time employees from qualifying as a “[s]mall employer” because the employer is a public employer rather than a private employer.⁵ Indeed, for several reasons, it appears that the General Assembly intended the definition of “[s]mall employer” to include any private or public employer that employs no more than 150 full-time employees. First, R.C. 1731.02(B) provides that “[t]he provisions and authority under and benefits provided by [R.C. Chapter 1731] shall be liberally construed and applied toward the achievement of the public objectives set forth in [R.C. 1731.02(A)].” R.C. 1731.02(A), in turn, states:

⁵A public employer may not qualify as a “[s]mall employer” under R.C. 1731.01(J) when it is “controlled by, controls, or is under common control with, one or more other entities” and the aggregate number of full-time employees of the public employer and all such other entities exceeds 150. R.C. 1731.01(J)(1)(a). Because a board of elections is not “controlled by, controls, or is under common control with,” one or more other public employers, this provision of R.C. 1731.01(J) does not prohibit a board of elections from otherwise qualifying as a “[s]mall employer” for purposes of R.C. Chapter 1731.

Members of a board of elections represent the Secretary of State in election matters. *See* R.C. 3501.06. A board of elections is required to follow rules and instructions concerning election matters prepared by the Secretary of State. *See* R.C. 3501.05; R.C. 3501.11. At the same time, funding for a board of elections is provided through “appropriations by the board of county commissioners, in the same manner as other county expenses are paid.” R.C. 3501.17(A); *see, e.g.*, R.C. 3501.12. While both the Secretary of State and a board of county commissioners have statutory responsibilities that bear upon the manner in which a board performs its duties, it remains that a board of elections generally exercises independent discretion while performing its duties on a day-to-day basis and expending appropriated moneys. *See generally State ex rel. City of North Olmsted v. Cuyahoga County Bd. of Elections*, 93 Ohio St. 3d 529, 533, 757 N.E.2d 314 (2001) (boards of elections are local authorities best equipped for determining compliance with election laws); *State ex rel. Milburn v. Pehtel*, 153 Ohio St. 1, 9, 90 N.E.2d 686 (1950) (“[t]he conduct of elections is clearly one of the functions involving the sovereignty of the state, and the powers given by law to [members of the boards of elections] authorize them to exercise independent judgment on matters clearly sovereign in character”); 2002 Op. Att’y Gen. No. 2002-025 at 2-169 (“[b]oth the designation of precincts and the determination of voting residence are left to the discretion of the board of elections”); 2001 Op. Att’y Gen. No. 2001-026 at 2-143 (“[w]hether a person meets the qualifications [for election to a public office] established by statute involves questions of fact that must be resolved on a case-by-case basis by a county board of elections”); 1984 Op. Att’y Gen. No. 84-091 at 2-313 (“once [a] board of county commissioners has appropriated a sufficient amount to meet the necessary expenses of the board of elections, the commissioners have no further control over the expenditures of the board of elections”). In light of this independent discretion, it is our view that a board of elections is not controlled by or under common control with either the office of the Secretary of State or a board of county commissioners for purposes of R.C. 1731.01(J)(1)(a).

[T]he creation of alliances of small employers to bargain with insurers better assures the obtaining of adequate coverage and benefits under health benefit plans at affordable costs and that the *larger the number of employees and other covered persons under such alliance*, the more certain is the achievement of those objectives, and that it is the public policy and a public purpose of the state to ... *encourage substantial size in such alliances*, in order to enhance strength in bargaining and economics of scale and thereby achieve broader coverage and benefit options at reduced costs. (Emphasis added.)

The General Assembly has thus stated that one objective of small employer health care alliances is to provide “[s]mall employers” with “adequate coverage and benefits under health benefit plans at affordable costs.” *Id.* In order to achieve this objective, the General Assembly has stated further that it is necessary to have as many “[s]mall employers” as possible participate in small employer health care alliances. *Id.* In light of these explicit declarations by the General Assembly and the fact that R.C. 1731.02(B) requires the language of R.C. Chapter 1731.01 to be liberally construed and applied toward providing affordable health benefit plans to “[s]mall employers,” it reasonably follows that R.C. 1731.01(J) should be construed and applied in such a manner as to make as many employers as possible eligible for participation in small health care alliances. This includes making public employers, as well as private employers, eligible for participation in such alliances.

In addition, legislative history indicates that the General Assembly did not intend to exclude public employers from the definition of “[s]mall employer” set forth in R.C. 1731.01(J). As enacted, R.C. 1731.01(J) stated, in part, “[s]mall employer,” *regardless of its definition in any other chapter of the Revised Code*, in this chapter means an employer that employs no more than one hundred fifty full-time employees, at least a majority of whom are employed at locations within this state.” 1991-1992 Ohio Laws, Part IV, 5576, 5580 (Am. Sub. H.B. 478, eff. Jan. 14, 1993) (emphasis added). At the same time that the General Assembly enacted R.C. 1731.01(J), the General Assembly also defined “[s]mall employer” for purposes of R.C. 3923.58-.59 and R.C. 3924.01-.14. *Id.* at 5684, 5688-92. In this regard, Am. Sub. H.B. 478 provided, in part:

Sec. 3923.58. (A) As used in sections 3923.58 and 3923.59 of the Revised Code:

....

(3) “Small employer” means any *person, firm, corporation, or partnership* actively engaged in business whose total employed work force, on at least fifty per cent of its working days during the preceding year, consisted of at least two unrelated eligible employees but no more than twenty-five eligible employees, the majority of whom were employed within this state....⁶

....

Sec. 3924.01. As used in sections 3924.01 to 3924.14 of the Revised Code:

....

⁶The definition of “[s]mall employer” set forth in R.C. 3923.58 was repealed in 1997. 1997-1998 Ohio Laws, Part II, 3160, 3191 (Sub. H.B. 374, eff. June 30, 1997).

(P)(1) In the case of health benefit plans issued by a health maintenance organization to a small employer, "small employer" means any *person, firm, corporation, partnership, or association* actively engaged in business whose total employed work force consisted of, on at least fifty per cent of its working days during the preceding year, at least two but no more than twenty-five eligible employees, the majority of whom were employed within the state. In the case of health benefit plans issued by any other carrier to a small employer, "small employer" means any *person, firm, corporation, partnership, or association* actively engaged in business whose total employed work force consisted of, on at least fifty per cent of its working days during the preceding year, at least two but no more than fifty eligible employees, the majority of whom were employed within the state.⁷ (Footnotes and emphasis added.)

Id. at 5684, 5688-92.

When the language used by the General Assembly in R.C. 1731.01(J), R.C. 3923.58(A)(3), and R.C. 3924.01(P)(1) is compared, it is readily apparent that different definitions for "small employer" were intended in different situations. *See generally Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (where the General Assembly has "used certain language in the one instance and wholly different language in the other, it will ... be presumed that different results were intended"). As defined in R.C. 3923.58(A)(3) and R.C. 3924.01(P)(1), this term is limited to persons, firms, corporations, partnerships, and associations. The use of these limiting terms in these definitions makes it clear that the definition of "[s]mall employer" set forth in these statutes does not include governmental entities. *See generally* 1996 Op. Att'y Gen. No. 96-028 (because a board of health is not a person, firm, corporation, partnership, or association, the board may not incorporate a nonprofit corporation); 1979 Op. Att'y Gen. No. 79-055 at 2-184 and 2-185 (because a board of county commissioners is not a person, firm, corporation, partnership, or association, the board may not incorporate a nonprofit corporation).

R.C. 1731.01(J) does not, however, contain such limiting language. Under R.C. 1731.01(J), any employer "that employs no more than one hundred fifty full-time employees, at least a majority of whom are employed at locations within this state," is a "[s]mall employer" for purposes of R.C. Chapter 1731. Moreover, R.C. 1731.01(J) states that, for purposes of R.C. Chapter 1731, the definition of "[s]mall employer" set forth therein applies "regardless of its definition in any other chapter of the Revised Code." It thus appears that the definition of "[s]mall employer" set forth in R.C. 1731.01(J) was intended to include more entities than the definitions of "[s]mall employer" set forth in R.C. 3923.58(A)(3) and R.C. 3924.01(P)(1). Accordingly, for purposes of R.C. Chapter 1731, any public or private employer that employs 150 or fewer full-time employees may qualify as a "[s]mall employer."

⁷The definition of "[s]mall employer" set forth in R.C. 3924.01(P)(1), now appears in R.C. 3924.01(N)(1), Sub. H.B. 374 at 3203, and reads as follows:

"Small employer" means, in connection with a group health benefit plan and with respect to a calendar year and a plan year, an employer who employed an average of at least two, but no more than fifty eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

Membership in a Nonprofit Corporation

Finally, no provision in R.C. Chapter 1702, which provides for the formation of, and membership in, nonprofit corporations, or R.C. Chapter 1725, which confers additional powers and privileges on chambers of commerce,⁸ prohibits a public entity from becoming a member of a chamber of commerce that is organized as a nonprofit corporation under R.C. Chapter 1702.⁹ Rather, pursuant to R.C. 1702.01(G), a “[m]ember” of a nonprofit corporation is any “one having membership rights and privileges in a corporation in accordance with its articles [of incorporation] or regulations.” Neither this provision nor any other in R.C. Chapter 1702 limits the types of entities that may become members of a nonprofit corporation. 1979 Op. Att’y Gen. No. 79-055 at 2-185. Accordingly, if a public entity is authorized to become a member of a nonprofit corporation, nothing in R.C. Chapter 1702 prohibits the public entity from becoming a member of the nonprofit corporation to the extent necessary to discharge its statutory duties. *See* 1979 Op. Att’y Gen. No. 79-055 (syllabus, paragraph two) (pursuant to R.C. 307.85, a board of county commissioners may be a member of a nonprofit corporation where such membership is reasonably related to the operation of a federal program).

As a member of a nonprofit corporation, a public employer is required to comply with the rules or regulations of the nonprofit corporation. *Am. Hungarian Fed’n v. Nadas*, 35 Ohio App. 3d 72, 74, 519 N.E.2d 677 (Cuyahoga County 1987). Thus, if a nonprofit corporation requires its members to pay a membership fee, the public employer may pay such membership fee.¹⁰ *See generally* R.C. 1702.11(A) (the regulations of a nonprofit corporation “may include provisions with respect to the following: ... [t]he fees and dues of members”).

⁸Any chamber of commerce organized in this state may avail itself of the privileges and powers conferred by R.C. 1725.01-.04 “by making a certificate of its adoption of those sections, under its seal, attested by the signatures of any authorized officer, which certificate shall be filed in the office of the secretary of state, and when so filed shall confer all privileges and power defined in it.” R.C. 1725.06.

⁹It is assumed, for the purpose of this opinion, that your question refers to a chamber of commerce that was incorporated pursuant to R.C. Chapter 1702 and that does not issue certificates for shares to its members. *See generally* R.C. 1702.13(B) (“[a] corporation may issue certificates evidencing membership in it, but a corporation incorporated on or after June 9, 1927, shall not issue certificates for shares”).

¹⁰Ohio Const. art. VIII, §§ 4 and 6 prohibit the state, counties, cities, towns, and townships from loaning their credit to, or in aid of, any corporation. These provisions are intended to prevent the “union of public and private capital” in a business enterprise. *Walker v. City of Cincinnati*, 21 Ohio St. 14, 54 (1871); *accord* 1979 Op. Att’y Gen. No. 79-055 at 2-185. Prior opinions of the Attorneys General have determined that these constitutional provisions are not violated when a governmental entity pays a membership fee to, or purchases services from, a nonprofit corporation. *See* 2002 Op. Att’y Gen. No. 2002-031 at 2-209 (“[n]o lending credit violation occurs in a purchase of services for fair compensation”); *see, e.g.*, 1997 Op. Att’y Gen. No. 97-051 at 2-319 n.6; 1989 Op. Att’y Gen. No. 89-010 at 2-41; 1984 Op. Att’y Gen. No. 84-080 at 2-272; 1983 Op. Att’y Gen. No. 83-069 at 2-287. *See generally* 1979 Op. Att’y Gen. No. 79-055 at 2-185 (“mere membership by the county commissioners in a non-profit corporation organized under R.C. Chapter 1702 does not violate that portion of Ohio Const. art. VIII, § 6, which states that “[n]o laws shall be passed authorizing any county ... to become a stockholder in any joint stock company, corporation, or association whatever”).

However, a public employer may not pay such a membership fee when the fee is unreasonable. *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”). Accordingly, nothing in R.C. Chapter 1702 prohibits a board of elections from becoming a member of a chamber of commerce that is organized as a nonprofit corporation under R.C. Chapter 1702 for the sole purpose of procuring group medical insurance under R.C. 3501.141 for members of the board and its full-time employees.¹¹

Conclusion

In light of the foregoing, it is our opinion that a board of elections’ procurement of group medical insurance for its members and full-time employees through a chamber of commerce that is a small employer health care alliance is a reasonable manner by which the board may obtain such insurance and one that is not prohibited by statute. Therefore, a board of elections that qualifies as a small employer, as defined in R.C. 1731.01(J), may procure group medical insurance under R.C. 3501.141 for its members and full-time employees through a chamber of commerce that is a small employer health care alliance certified pursuant to R.C. 1731.021 to sponsor an alliance health care program.

Based on the foregoing, it is my opinion, and you are hereby advised that a board of elections that qualifies as a small employer, as defined in R.C. 1731.01(J), may procure group medical insurance under R.C. 3501.141 for its members and full-time employees through a chamber of commerce that is a small employer health care alliance certified pursuant to R.C. 1731.021 to sponsor an alliance health care program.

¹¹Because R.C. 3501.141 only permits a board of elections to procure various types of group insurance for its members and full-time employees, a board of elections may only be a member of a chamber of commerce that is a small employer health care alliance for the sole purpose of procuring such insurance. *See* 1979 Op. Att’y Gen. No. 79-055 (syllabus, paragraph two).