

OPINION NO. 84-066**Syllabus:**

1. A board of county commissioners may hire employees to perform administrative services associated with a health insurance program for county officers and employees.
2. A board of county commissioners may contract with an entity, whether or not an insurance company, to perform administrative services associated with a health insurance program for county officers and employees, even though such entity is not providing the insurance coverage.

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 16, 1984

I have before me your request for my opinion concerning the ability of a county to operate a health and medical benefits plan for its employees. Your questions center around a type of health insurance plan, similar to the one described in 1981 Op. Att'y Gen. No. 81-045 and 1981 Op. Att'y Gen. No. 81-069. The type of plan involved in these two opinions was described as follows:

The policyholder contracts with the insurer, agreeing to pay a premium and the cost of all claims to a maximum amount. In exchange for this consideration, the insurer handles the entire administration of the plan, guarantees the payment of all benefits described in the policy, and pays those claim costs which exceed the maximum amount. The policyholder is not involved in any way with the administration of the plan.

Op. No. 81-069 at 2-282 to 2-283.

You state in your letter:

Particularly, we are interested in determining whether or not the County may separate the performance of administrative services, including the processing of claims for which the County would be directly responsible for the health and medical benefits, from the stop loss coverage provided by insurance under such a health and medical insurance plan.

Assuming that some entity may perform the administrative services separate from the insurance company, which of the following are fact situations that would be acceptable:

1. The county itself as the administrator.
2. An insurance company, other than the stop loss insurer, as administrator.
3. An entity, other than an insurance company, as administrator.

I note first that, as a creature of statute, a county has only those powers which are expressly granted by statute, or which may be necessarily implied

therefrom. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947).

Pursuant to R.C. 305.171(A), a board of county commissioners has the authority to procure health and medical insurance issued by an insurance company, a hospital service association, a medical care corporation, a dental care corporation, or a hospital service association in conjunction with an insurance company for county officers, employees, and their dependents. R.C. 305.171(A) reads as follows:

The board of county commissioners 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, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, or group life insurance, or a combination of any of the foregoing types of insurance or coverage for county officers and employees and their immediate dependents from the funds or budgets from which said officers or employees are compensated for services, issued by an insurance company, a hospital service association organized under Chapter 1739. of the Revised Code, a medical care corporation organized under Chapter 1737. of the Revised Code, a dental care corporation organized under Chapter 1740. of the Revised Code, or a hospital service association in conjunction with an insurance company duly authorized to do business in this state.

In Op. No. 81-069, my predecessor opined that R.C. 305.171 empowers a board of county commissioners to procure the type of health and medical insurance plan described above, specifically concluding:

By virtue of the express statutory grant in R.C. 305.171, a board of county commissioners may provide health and medical insurance to its employees pursuant to an insurance contract which obligates the board to pay claim costs up to a predetermined definite level and under which the insurance company assumes the indeterminable risks inherent in the employee coverage.

Op. No. 81-069 (syllabus). This conclusion was based in part on Op. No. 81-045, which had determined that a board of education could, pursuant to its power to purchase health and medical insurance, provide this type of plan where the board would pay claim costs up to a predetermined definite level, and under which the insurance company would assume the indeterminable risks involved in the employee coverage and guarantee all benefits under the plan.

Under the type of plan discussed in Op. No. 81-045 and Op. No. 81-069, the public employer contracted with the insurance company providing coverage to also perform administrative services connected with the insurance plan, including the processing of all claims. Op. No. 81-045 and Op. No. 81-069 at least implicitly indicate that a board of education or a board of county commissioners has the authority, pursuant to its power to provide health insurance, to contract with an insurance company for the performance of these administrative services associated with an insurance plan, at least where those services are performed by the company providing the insurance coverage. You now wish to know whether the county itself may perform these administrative services, or whether the county may contract for the provision of these administrative services with an insurance company other than the company providing insurance coverage, or with an entity which is not an insurance company.

I recently had occasion to consider similar issues with regard to a board of education. In 1984 Op. Att'y Gen. No. 84-030, I addressed the question whether a board of education has the authority to contract with any person or private organization to provide administrative services in connection with the type of insurance plan described above, whether or not such entity is providing insurance

coverage for board employees, and whether or not the entity is an insurance company. In Op. No. 84-030 I stated:

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).

Op. No. 84-030 at 2-87.

Like a board of education, a board of county commissioners has the express authority to provide insurance, from which may be implied the power to provide administrative services in connection with the insurance coverage provided. See Op. No. 81-069. Because a county has the authority to provide administrative services in connection with insurance coverage, it has the authority to hire employees to perform those services. See R.C. 305.13; 1981 Op. Att'y Gen. No. 81-036. Thus, I conclude that the county itself may perform administrative services in connection with the provision of a health and medical insurance plan.

I turn next to your question concerning whether a county may contract with an entity other than the insurer to perform these administrative services. Again, I addressed this question in Op. No. 84-030 with regard to boards of education, and concluded therein that since a board of education has the authority to provide administrative services in connection with an insurance plan, it may contract to have an independent contractor perform those services. Cited in support of this conclusion were State ex rel. Sigall v. Aetna Cleaning Contractors of Cleveland, Inc., 45 Ohio St. 2d 308, 345 N.E.2d 61 (1976); Sovine v. Teater, 47 Ohio App. 2d 254, 353 N.E.2d 880 (Franklin County 1976), 1983 Op. Att'y Gen. No. 83-038, 1970 Op. Att'y Gen. No. 70-084, and 1964 Op. Att'y Gen. No. 64-1066. There is no distinction between the powers of a board of education and a board of county commissioners which prevents me from adopting and extending this conclusion to counties. Because a board of county commissioners has the authority to provide administrative services in connection with an insurance plan, it may provide these services through an independent contractor.

I note, however, that there are restrictions on the power of a board of county commissioners to contract with an independent contractor for the provision of services. A board of county commissioners may not utilize the services of an independent contractor in order to thwart the purposes of the civil service system. See Local 450L, Communications Workers of America v. Ohio State University, 12 Ohio St. 3d 274, ___ N.E.2d ___ (1984); State ex rel. Sigall v. Aetna Cleaning Contractors of Cleveland, Inc. See also Sovine v. Teater. In addition, a board of county commissioners may not contract with an independent contractor if such contract would place the board in violation of any of its collective bargaining agreements with employees. See Local 450L, Communications Workers of America v. Ohio State University.

Further, a board of county commissioners may not contract with an independent contractor for the performance of certain duties where it is apparent that the board must perform those responsibilities itself or through its employees. See 1983 Op. Att'y Gen. No. 83-027; 1981 Op. Att'y Gen. No. 81-002. See generally Councell v. Douglas, 163 Ohio St. 292, 126 N.E.2d 597 (1955) (distinguishing between the relationship of employer and employee and the relationship of employer and independent contractor). It does not appear that the duties associated with the administration of a health insurance plan are such that they must be performed by county employees as opposed to an independent contractor. See Op. No. 84-030. To the extent that a board of county commissioners is expressly prohibited from contracting out certain duties, it may not, of course, contract with an independent contractor to perform those duties. I am unaware, however, of any prohibition against a board of county commissioners contracting out the performance of administrative services in connection with an insurance plan.

You have inquired as to whether the county may contract for administrative services in connection with an insurance plan with an insurance company other than the company providing insurance coverage, or with an entity which is not an insurance company. R.C. 305.171(A) empowers a board of county commissioners to contract for health and medical insurance with an insurance company, a hospital service organization organized pursuant to R.C. Chapter 1739, a medical care corporation organized pursuant to R.C. Chapter 1737, a dental care corporation organized under R.C. Chapter 1740, or a hospital service association in conjunction with an insurance company authorized to do business in Ohio. Thus, a county is limited as to the type of organization with which it may contract with regard to the provision of insurance coverage. As I discussed in Op. No. 84-030, however, a contract for the administration of an insurance plan does not itself constitute a contract of insurance. See State ex rel. Duffy v. Western Auto Supply Co., 134 Ohio St. 163, 16 N.E.2d 256 (1938). Thus, the restrictions of R.C. 305.171(A) with regard to the type of organization with which the county may contract do not apply to a contract for the administration of an insurance plan. I am unaware of any other restrictions which would apply to limit the types of organizations with which the county may contract for the provision of administrative services associated with an insurance plan. Thus, I conclude that a board of county commissioners may contract with an entity, whether or not an insurance company, to perform administrative services associated with a health insurance program for county employees, even though such entity is not providing the insurance coverage.

As a final matter, in your letter of request you have drawn my attention to the authority of a board of county commissioners to hire consultants as a possible source of authority to contract with an entity for the performance of administrative services in connection with an insurance plan. R.C. 9.36 does empower a board of county commissioners to "contract for the services of fiscal and management consultants to aid it in the execution of its powers and duties." Thus, the county commissioners could, pursuant to R.C. 9.36, contract with a consultant to advise the county as to administrative services associated with an insurance program. As I noted in Op. No. 84-030, however, the power to hire a consultant with regard to a particular matter does not empower the board to contract with an entity to actually perform the board's duties since 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." Op. No. 84-030 at 2-88. See 1983 Op. Att'y Gen. No. 83-013; 1981 Op. Att'y Gen. No. 81-040.

In conclusion, it is my opinion, and you are advised, that:

1. A board of county commissioners may hire employees to perform administrative services associated with a health insurance program for county officers and employees.
2. A board of county commissioners may contract with an entity, whether or not an insurance company, to perform administrative services associated with a health insurance program for county officers and employees, even though such entity is not providing the insurance coverage.