

**OPINION 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.

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**To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio**  
**By: William J. Brown, Attorney General, June 7, 1977**

You have requested my opinion as to whether a township may join in a general overall plan with the county for the procurement of insurance pursuant to R.C. 505.60.

R.C. 505.60 permits the board of township trustees to provide township employees with certain types of insurance. It states:

"The board of township trustees of any township may procure and pay all or any part

of the cost of hospitalization, surgical, major medical, or sickness and accident insurance or a combination of any of the foregoing types of insurance to provide uniform coverage for township officers and employees and their immediate dependents from the funds or budgets from which said officers or employees are compensated for services, whether issued by an insurance company, a hospital service association, or a nonprofit medical care corporation, 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."

In order to determine if a township may cooperate with the county in which it is located certain general principles must guide my analysis. Township trustees possess only that power which is expressly conferred upon them by statute and that which is necessarily implied pursuant to the duties imposed upon them by statute. Hopple v. Brown Twp., 13 Ohio St. 311 (1862), Trustees of New London Township v. Minor, 26 Ohio St. 452 (1875); 1974 Op. Att'y Gen. No. 74-027; 1973 Op. Att'y Gen. No. 73-090. Thus, the issue is not whether there is a prohibition against the exercise of authority, but whether such authority is conferred or necessarily implied by law. State, ex rel. Schram v. Ayers, 158 Ohio St. 30, 106 N.E.2d 630 (1952).

In certain specific areas, the legislature has permitted joint enterprises involving financial transactions between various state political subdivisions. R.C. 513.11 provides for contiguous townships to become part of a joint township hospital district. See, Schramm, supra. R.C. 755.16 defines the political subdivisions which may join in the acquisition and maintenance of recreational facilities. See, 1969 Op. Att'y Gen. No. 69-099.

In a number of cases, county or township officials have sought to extend their power by financial expenditures which they believe statutorily permitted. (Both of these political subdivisions have analogous restraints on their powers. See, 1973 Op. Att'y Gen. No. 73-090). In State, ex rel. Locher v. Menning, 95 Ohio St. 97 (1916), the court stated:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

The Locher rationale has been carried forth in numerous instances where county or township officials attempt to hire private consultants with public funds.

1973 Op. Att'y Gen. No. 73-091. See also Gorman v. Heuck, 40 Ohio App. 453 (1931), 1971 Op. Att'y Gen. No. 71-092, 1970 Op. Att'y Gen. No. 70-003, 1961 Op. Att'y Gen. No. 61-188.

The concern of the courts and the legislature is that public monies should not be expended for activities that are not specifically or necessarily implied by statute. The purchase of insurance is specifically authorized by R.C. 505.60. The insurance procured must be (1) uniform, (2) for township officers and employees and their immediate dependents, (3) funded from employee compensation and (4) optional.

Your request expresses concern over my earlier opinion which required that the group of persons covered by R.C. 505.60 "must consist of a township's officers and employees." 1969 Op. Att'y Gen. No. 69-046, p. 98. Under a strict interpretation of the statute, the "group" could not be expanded to include county employees. The statute has since been amended to delete the word "group" apparently to allow townships to procure other types of coverage besides group insurance. The issue presented in that opinion concerned the group within a township that must be included pursuant to R.C. 505.60. Plainly, R.C. 505.60 requires insurance coverage to include township officers and employees, but this does not preclude the joining of township officers and employees with those of a county.

As I noted above, township trustees must not participate in a financial transaction not sanctioned by statute whereby public monies flow to the county. Nonetheless, a township may jointly cooperate with the county in negotiations with an insurance company in order to procure an acceptable plan of coverage. It is not simple cooperation that the authorities condemn; what is prohibited is an expenditure of public money for an unauthorized purpose.

In the present instance, township trustees may purchase insurance funded in whole or in part from township employee compensation. R.C. 505.60. The county has a similar grant of power. R.C. 305.17. The joining of a township and a county in one coverage plan does not alter the fact that the employee compensation in which the insurance is procured is still authorized. As long as there is no exchange of funds between these political entities, the township and the county monies remain separate and distinct.

It is my opinion, and you are so advised, that 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.