

**Note from the Attorney General's Office:**

1976 Op. Att'y Gen. No. 76-058 was clarified by  
1980 Op. Att'y Gen. No. 80-002.

1976 Op. Att'y Gen. No. 76-058 was overruled by  
1981 Op. Att'y Gen. No. 81-099.

## OPINION NO. 76-058

## Syllabus:

An increase in the cost of health insurance premiums paid on behalf of elected and appointed officers constitutes an increase in salary and is, therefore, prohibited during the existing term of any such officer by Article II, Section 20 of the Ohio Constitution.

To: Richard L. Krabach, Director, Dept. of Administrative Services, Columbus, Ohio

By: William J. Brown, Attorney General, August 20, 1976

I have before me your request for my opinion concerning the increased cost of health insurance for state officers. You note in your request that the State Employees Compensation Board shall, pursuant to R.C. 124.82, contract with an insurance company or non-profit association for the issuance of various insurance policies for state employees. A policy with benefits identical to those in force prior to June 1975 has been negotiated by the Board, but at a higher cost. The amount paid by the state on behalf of each officer and employee has, therefore, increased. Your question reads as follows:

"An opinion is requested whether such increased cost of health insurance paid on behalf of elected and appointed officials constitutes an increase in remuneration prohibited by Article II, Section 20 of the Ohio Constitution."

Article II, Section 20 of the Ohio Constitution provides as follows:

"The General Assembly, in cases not provided for in this constitution, shall fix the terms of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished." (Emphasis added.)

Two early decisions of the Ohio Supreme Court drew a distinction between compensation and salary for the purposes of this provision and concluded that the prohibition operates only as to increases in salary and not as to increases in other types of compensation. See, Gobrecht v. Cincinnati, 51 Ohio St. 68 (1894); Thompson v. Phillips, 12 Ohio St. 617 (1861). This line of cases was implicitly overruled by later interpretations of the provision which read it as prohibiting any increases in compensation, as well. State, ex rel. Milburn v. Kelser, 133 Ohio St. 429 (1938). The Supreme Court did not, however, expressly overrule Gobrecht and Thompson, supra, until its decision in the case of State, ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62 (1975). In that case the court held that the terms "salary" and "compensation" as used in Section 20, Article II of the Ohio Constitution are synonymous. It is quite clear, therefore, that the provision strictly prohibits any increase in compensation of any kind during the "existing term" of a state officer.

You note in your request that the health insurance benefits provided have remained the same, but that the cost of such coverage has increased. Accordingly, the amount that must be paid by the state on behalf of state officers has increased. Disposition of the question at hand, therefore, turns upon whether or not these payments constitute part of a public officer's compensation.

Several cases have held that payments similar to those under consideration, which are made on behalf of public officers and employees, are part of their compensation paid. State, ex rel. Mikus v. Roberts, 15 Ohio St. 2d 253 (1968); State, ex rel. Boyd v. Tracy, 128 Ohio St. 242 (1934); State, ex rel. v. Raine, 49 Ohio St. 580 (1892). Furthermore, my predecessors have repeatedly and consistently recognized that insurance payments paid on behalf of a public employee are part of their compensation. See, 1927 Op. Att'y. Gen. No. 37, p. 48; 1928 Op. Att'y. Gen. No. 2055, p. 1099; 1931 Op. Att'y. Gen. No. 3383, p. 889; 1961 Op. Att'y. Gen. No. 2171, p. 218; 1969 Op. Att'y. Gen. No. 69-034.

Most recently, I have concluded in 1975 Op. Att'y. Gen., No. 75-061 that the payment of life insurance premiums and in 1972 Op. Att'y. Gen. No. 72-059 that the payment by a municipality of health insurance premiums constitute a part of the compensation to the individuals benefiting from them. It is clear, therefore, that an increase in an employer's contribution towards the payment of an employee's insurance policy would effect a corresponding increase in that employee's compensation.

It is, therefore, my opinion, and you are so advised that an increase in the cost of health insurance premiums paid on behalf of elected and appointed officers constitutes an increase in salary and is, therefore, prohibited during the existing term of any such officer by Article II, Section 20 of the Ohio Constitution.