

## OPINION NO. 75-061

**Syllabus:**

1. An increase in paid group life insurance during the existing term of a state officer is a change in salary under Article II, Section 20 of the Ohio Constitution and is therefore prohibited during such "existing term."

2. An increase in group life insurance for state officers under contracts entered into by the State Employee Compensation Board pursuant to R.C. 124.81 is available during a state officer's existing term if paid for from the officer's own financial resources, although this payment may be deducted from the officer's state salary.

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

By: William J. Brown, Attorney General, September 12, 1975

I have before me your request for my opinion concerning an increase in group life insurance for state employees. Under contracts recently entered into by the State Employee Compensation Board the costs of purchasing group life insurance for all state employees paid directly by warrant of the state auditor materially increased. The group life insurance policy includes an increase in the amount of insurance for each employee as well as an increase in the rate per \$1000.00. Those state employees affected includes elected state officials. See R.C. 124.81.

You state your question as follows:

"An opinion is requested concerning whether the increased costs of the above programs are an increase in compensation which is prohibited during the term of office by Article II, Section 20 of the Ohio Constitution."

Article II, Section 20 of the Ohio Constitution reads 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.)

The question of whether a benefit of this nature is contrary to Article II, Section 20, *supra*, was discussed at length in 1972 Op. Att'y Gen. No. 72-059. In that opinion, payment of hospitalization benefits for a municipal official was held to be contrary to the Ohio Constitution despite adoption of municipal ordinances on that subject. This opinion reads in pertinent part as follows:

"In your case the mayor and the auditor have definite salaries. Consequently, if the hospi-

talization benefits be considered either 'compensation' or 'salary', the result, with respect to the terms then being served, was a prohibited increase under Article II, Section 20, supra. . . .

"My predecessors have held repeatedly that similar insurance payments on behalf of a public employee are compensation. Opinion No. 37, Opinions of the Attorney General for 1927; Opinion No. 2055, Opinions of the Attorney General for 1928; Opinion No. 3383, Opinions of the Attorney General for 1931; Opinion No. 822, Opinions of the Attorney General for 1937. In Opinion No. 2171, Opinions of the Attorney General for 1961, the then Attorney General specifically held that the payment of hospitalization premiums was part of the compensation of municipal employees. And, in 1969 Op. Att'y Gen. No. 69-034, my immediate predecessor came to the same conclusion as to hospitalization premiums paid for county employees."

It should be noted that the Ohio Supreme Court in the recent case of Artmayer v. Board of Trustees, 43 Ohio St. 2d 62 (1975), determined that the terms "salary" and "compensation" are synonymous. The pertinent language of that decision reads as follows:

"In the two early cases of Thompson v. Phillips (1861), 12 Ohio St. 617, and Gobrecht v. Cincinnati, (1894), 51 Ohio St. 68, 36 N.E. 782, the court reached a different result by distinguishing compensation from salary. However, none of the later cases involving Section 20, Article II of the Ohio Constitution, have adopted the Thompson rule. It is clear that Thompson and Gobrecht have been overruled, sub silentio, by the later cases of this court. See, e.g., State, ex rel. DeChant, v. Kelser, supra (133 Ohio St. 429).

"This court expressly overrules those cases today." Id. at 65. (Emphasis added.)

In view of these authorities, insurance coverage increases as you describe would be contrary to the Ohio Constitution, and would be considered an increase in salary during the existing terms of office, and prohibited for those officers addressed in Article II, Section 20 of the Ohio Constitution.

Having made this determination, I must address myself to the question of whether state employees affected by this decision can individually purchase this insurance out of their personal financial resources.

Section 9.90, Ohio Revised Code, which deals with the purchase of life insurance for educational employees, permits these individuals to have life insurance premiums deducted from their salary. This section reads in pertinent part as follows:

"All or any portion of the cost, premium, or charge therefor may be paid in such other manner or combination of manners as the governing board or the school board may determine, including direct payment by the employee, and, if authorized in writing by the employee, by such governing board or

school board with moneys made available by deduction from or reduction in salary or wages or by the foregoing of a salary or wage increase."

R.C. 3917.01(B)(7) defines as group life insurance that which covers employees of this state and further provides that:

"[The premium on group life insurance] is to be paid by such employee, unless otherwise provided by law, charter, or ordinance, for the benefit of persons other than the employer; . . .

"The premiums for the group term life insurance shall be paid by the policyholder from funds solely contributed by the insured employee or member." (Emphasis added.)

Section 3917.04 further provides that the premium for such life insurance policies may be deducted from the salary of the state employee if done with his consent and written authorization.

These statutes are wholly consistent with recent amendments to Section 124.81, Ohio Revised Code, which permit insured state employees to purchase and pay premiums on group life insurance policies when their accrued sick leave has been expended. This provides an alternative means of meeting life insurance premiums when the state is otherwise prohibited or precluded from paying for state employees' group life insurance premiums. It is this pervading trend throughout the code that permits the purchase of life insurance in this manner.

The relevant portions of Sections 9.90, 3917.01 and 3917.04, supra, make it clear that group life insurance for these state officials is permissibly purchased, provided that the premiums for the coverage are paid from the individual officer's private financial resources or, as plainly indicated by the statute, deducted from his salary. In this way, the onus of "salary-compensation" is removed from issue.

Based upon the foregoing and in specific response to your question, it is my opinion and you are so advised that:

1. An increase in paid group life insurance during the existing term of a state officer is a change in salary under Article II, Section 20 of the Ohio Constitution and is therefore prohibited during such "existing term."

2. An increase in group life insurance for state officers under contracts entered into by the State Employee Compensation Board pursuant to R.C. 124.81 is available during a state officer's existing term if paid for from the officer's own financial resources, although this payment may be deducted from the officer's state salary.