

OPINION NO. 83-011

Syllabus:

A county board of education has no authority to procure a hospitalization insurance policy covering members of the board, their spouses, or their dependents.

To: Gregory W. Happ, Medina County Prosecuting Attorney, Medina, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 25, 1983

I have before me your opinion request in which you ask whether county school board members may participate in the same hospitalization plan which is provided for the board's employees. You specifically ask:

1. Is the advantage of purchasing group rate insurance by a school board member, which is available to school board employees "compensation" as that term is used in Sections 3313.12 and 3313.86?
2. Provided the school board [member] pays the actual cost of insurance, can a board member purchase at the group rate?

Before answering your specific questions, it is necessary to examine the powers of county school board members. It is well settled that:

Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given.

Schwing v. McClure, 120 Ohio St. 335, 166 N.E. 230 (1929) (syllabus, paragraph one).

The authority of a school board concerning the procurement or purchase of hospitalization insurance is found in R.C. 9.90 and R.C. 3313.202. R.C. 9.90(A) states, in pertinent part:

[T]he board of education of any school district, may, . . . :

(1) Contract for, purchase, or otherwise procure. . .for or on behalf of such of its employees as it may determine. . .hospital. . .coverage and benefits. . .by means of insurance plans or other types of coverage, family, group or otherwise, and may pay. . .all or any portion of the cost, premium, or charge therefor; (Emphasis added.)

Pursuant to R.C. 9.90, the authority of a board of education to procure and pay for hospital insurance extends only to the procurement of or payment for insurance for or on behalf of its employees. Since board members are not employees of the board, R.C. 9.90 does not authorize the board to procure hospitalization insurance covering members of the board. See Schwing (board of education members are public officers).

R.C. 3313.202 provides, in part:

The board of education of a school district may procure and pay all or part of the cost of. . .hospitalization, surgical, or major medical insurance, or a combination of any of the foregoing types of insurance or coverage. . .covering the teaching or nonteaching employees of the school district, or a combination of both, or in the case of hospitalization, surgical, or major medical insurance, the dependent children and spouses of such employees. . . . As used in this section "teaching employees" means any person employed in the public schools of this state in a position for which he is required to

have a certificate pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code. "Nonteaching employees" as used in this section means any person employed in the public schools of the state in a position for which he is not required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code. (Emphasis added.)

Thus, R.C. 3313.202 authorizes a board of education to procure and pay for hospitalization insurance for teaching and nonteaching employees of the school district and for the dependent children and spouses of such employees. Clearly, board of education members are not included as persons for whom the board may procure or pay for hospitalization insurance pursuant to R.C. 3313.202.

Because no statute of which I am aware expressly authorizes a county board of education to procure or pay for hospitalization insurance covering members of the board and their families, the question arises as to whether a county school board member may purchase hospitalization insurance coverage, at no cost to the board, and take advantage of the group rates available to school board employees, as a form of compensation which such board member may receive.

Concerning the compensation of county school board members, R.C. 3313.12 states, in part:

Each member of the county board of education may be paid such compensation as the board provides by resolution, provided that any such compensation shall not exceed forty dollars a day and mileage at the rate of fifteen cents a mile both ways to cover the actual and necessary expenses incurred during his attendance upon any meeting of the board not exceeding twelve meetings in any one year.

Thus, the school board has authority to fix the compensation of board members, provided that such compensation does not exceed forty dollars a day and a fixed rate for mileage to cover actual and necessary expenses for attending up to twelve board meetings per year. Furthermore, the board's authority to fix the compensation of its members is subject to any other statutory provisions which constitute constricting authority.¹ See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); 1981 Op. Att'y Gen. No. 81-052.

Assuming, for purposes of discussion, that the board's procurement of a hospitalization insurance policy for its board members, at no cost to the board, is a form of compensation to board members, it is necessary to determine whether any statutes restrict the board's authority to provide such compensation.

As set forth above, R.C. 9.90 and R.C. 3313.202 specifically authorize boards of education of any school district to procure and pay for hospitalization insurance, but only for the school district's employees and, pursuant to R.C. 3313.202, the dependent children and spouses of such employees. Since the legislature has specifically addressed the authority of a school board to procure and pay for hospitalization insurance and has limited such authority to the provision of such benefit for employees, their spouses, and their dependent children, I believe that such statutes constitute constricting authority upon the board's power to procure or pay for hospitalization insurance. If the legislature had intended to include board members within the group of people for whom the board may procure hospitalization insurance, it could easily have done so. Compare R.C. 3313.202 with R.C. 3313.201 (authorizing board of education to procure liability insurance for officers, employees, and pupils of school district for damage or injury to persons and property occasioned by operation of motor vehicle owned or operated by school district) and R.C. 3313.203 (authorizing board of education to purchase liability insurance covering "members of boards of education, superintendents, principals,

¹ R.C. 3313.86 also prohibits a board of education member from accepting or receiving "for his services as such member any compensation except as otherwise provided by law."

other administrators, teachers, or any other group of employees employed by the board" for damages or injury resulting from acts or omissions in the official capacity of any such person or resulting solely out of such person's membership on or employment by the board).

It is, therefore, my opinion, and you are advised, that a county board of education has no authority to procure a hospitalization insurance policy covering members of the board, their spouses, or their dependents.