

OPINION NO. 78-029**Syllabus:**

1. A board of county commissioners must pay premiums for family group medical insurance for the employees of a county mental health and mental retardation board to the extent that the executive director has authorized such payments pursuant to R.C. 340.04(E).
2. A board of county commissioners must pay family group medical insurance premiums on behalf of employees of a county officer who has authorized such payments pursuant to his power to fix the compensation of his employees.
3. The cost of procuring family group medical insurance for county employees may be charged, pursuant to R.C. 305.171, to any fund or budget from which said employees are compensated for their services. 1968 Op. Atty Gen. No. 88-140 overruled.

To: Ronald W. Vettel, Ashtabula County Pros. Atty., Jefferson, Ohio
By: William J. Brown, Attorney General, May 4, 1978

I have before me your request for my opinion on the following two questions:

1. May a Board of Commissioners pay the monthly premium for family group medical insurance for the employees of a community mental health and retardation board, and the employees of the County Engineer's Office, when the Board of County Commissioners does not pay similar benefits for any other county employees?
2. Do county governmental department heads have the authority by virtue of R.C. 325.17 of the Revised Code to require a county board of commissioners to pay premiums for family group medical insurance from funds under their control by virtue of their authority to fix the compensation of their employees?

An issue common to both of your questions is the proper characterization of medical insurance premium payments. This issue was addressed by the Ohio Supreme Court in State, ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389 (1976) and in Madden v. Bower, 20 Ohio St. 2d 135 (1969). In Madden, supra, the Court discussed the proper characterization of employee insurance benefits at 137 as follows:

At the outset, we are compelled to the conclusion that, as to each employee receiving the right to the benefits of the insurance, the premium is a part of the cost of public service performed by such employee.

The purpose of an employer, whether public or private, in extending "fringe benefits" to an employee

is to induce that employee to continue his current employment.

In Parsons, supra, the Court held that insurance premium payments made on the behalf of county office holders constituted compensation within the meaning of Ohio Const. Art. II, §20 and therefore such payments could not be initiated after the commencement of the term for which a county official was elected or appointed. The Court set forth the rationale for this conclusion at 391 as follows:

Fringe benefits, such as [insurance premium payments], are valuable perquisites of an office, and are as much a part of the compensation of office as a weekly pay check. It is obvious that an office holder is benefitted and enriched by having his insurance bill paid out of public funds just as he would be if the payment were made directly to him, and only then transmitted to the insurance company. Such payments for fringe benefits may not constitute "salary", in the strictest sense of that word, but they are compensation.

Since insurance premium payments are a form of compensation, authorization for such payments may be made by the officer or board with the statutory power to fix the employees' compensation. 1975 Op. Atty Gen. No. 75-084. See also, 1977 Op. Atty Gen. No. 77-048; 1976 Op. Atty Gen. No. 76-004, 1975 Op. Atty Gen. No. 75-014; 1969 Op. Atty Gen. No. 69-045.

While under the terms of R.C. 340.01, the boundaries of a single county mental health and retardation district are contiguous with those of the county it serves, the district is an entity separate and distinct from the county. Consequently, the employees of the district serve it rather than the county. See e.g., 1974 Op. Atty Gen. No. 74-015; 1975 Op. Atty Gen. No. 75-034; 1975 Op. Atty Gen. No. 75-084; 1976 Op. Atty Gen. No. 76-004. The executive director of a community mental health and retardation board is expressly empowered, pursuant to R.C. 340.04(E), to employ such employees and consultants as may be necessary for the work of the board and to fix their compensation within the limits set by the salary schedule and the budget approved by the board. A board of county commissioners exercises no authority in fixing the compensation of employees of a board of mental health and mental retardation.

The hiring and compensation of employees of county office holders is, however, governed by R.C. 325.17, which provides in pertinent part as follows:

The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. When so fixed, the compensation of each such [employee] shall be paid biweekly from the county treasury, upon the warrant of the auditor.

The officers mentioned in R.C. 325.27 are the county auditor, county treasurer, probate judge, sheriff, clerk of the court of common pleas, county engineer and county recorder. Under the express terms of R.C. 325.17, a board of county commissioners may limit the aggregate amount which may be expended for compensation of deputies, assistants, clerks and other employees of the officers enumerated in R.C. 325.27. A board of county commissioners, however, has no authority to fix the number or compensation of such employees. 1926 Op. Atty Gen. No. 3429, p. 253; 1927 Op. Atty Gen. No. 1339, p. 2432. Moreover, as

discussed in 1941 Op. Att'y Gen. No. 3600, county commissioners are not authorized to interfere with or limit the county officers enumerated in R.C. 325.17 in the appointment and compensation of such employees.

It is my opinion that the executive director of a community mental health and retardation board is empowered to authorize the payment of medical insurance premiums on behalf of board employees. Moreover, it is my opinion that the county office holders enumerated in R.C. 325.27 are, under the terms of R.C. 325.17, empowered to authorize similar payments on behalf of their employees. The payment of such premiums is not conditioned upon the concurrent action of the board of county commissioners granting similar benefits to other county employees. The total compensation paid to or on behalf of the employees, including salary, insurance premiums and other fringe benefits, may not, however, exceed the limits set forth in the appropriate budgets adopted by the community mental health and retardation board or the board of county commissioners for the various county offices.

Your second question also seeks clarification of the appropriateness of charging the payments of insurance premiums against special funds under the control of the county office holder.

In 1968 Op. Att'y Gen. No. 68-140, one of my predecessors concluded that the board of county commissioners had no authority to charge the cost of group medical insurance procured under the authority of R.C. 305.171 against any fund other than the general fund. This conclusion was based in part on the premise that, while the board of county commissioners had the authority to pay insurance premiums for county employees, the various county office holders had no such authority. This premise is, however, no longer correct in light of the Ohio Supreme Court holding that insurance premium payments are a form of compensation. As I indicated above, county officers who are statutorily empowered to fix the compensation of their employees may also authorize the payment of insurance premiums for such employees.

The conclusion in Opinion No. 68-140, *supra*, was also premised on the lack of statutory authority enabling the county commissioners to charge any part of the cost of employee fringe benefits to special tax levy funds or other appropriations. R.C. 305.171, which authorizes the procurement of group insurance for county employees, was, however, expressly amended in 1969 to provide for the payment of the costs of group insurance "from the funds or budgets from which [county] officers or employees are compensated for services."

Thus, it is my opinion that 1968 Op. Att'y Gen. No. 68-140 must be overruled. County officers who are statutorily empowered to fix the compensation of their employees may authorize the payment of insurance premiums for their employees and such payments may be charged to any fund or budget from which such employees are compensated.

In response to your specific questions, it is, therefore, my opinion and you are so advised that:

1. A board of county commissioners must pay premiums for family group medical insurance for the employees of a county mental health and mental retardation board to the extent that the executive director has authorized such payments pursuant to R.C. 340.04(E).
2. A board of county commissioners must pay family group medical insurance premiums on behalf of employees of a county officer who has authorized such payments pursuant to his power to fix the compensation of his employees.
3. The cost of procuring family group medical

insurance for county employees may be charged, pursuant to R.C. 305.171, to any fund or budget from which said employees are compensated for their services. 1968 Op. Atty Gen. No. 68-140 overruled.