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A COUNTY EMPLOYEE MAY AUTHORIZE DEDUCTIONS FROM HIS SALARY FOR BLUE CROSS AND BLUE SHIELD PREMIUMS, A BOARD OF COUNTY COMMISSIONERS HAS NO AUTHORITY TO ENTER INTO A CONTRACT FOR BLUE CROSS AND/OR BLUE SHIELD COVERAGE WHERE COVERAGE PREMIUMS WILL BE PAID FROM GENERAL COUNTY FUNDS—§1739.15, R.C.

SYLLABUS:

Although under Section 1739.15, Revised Code, a county employee may authorize deductions from his salary for the payment of Blue Cross and Blue Shield premiums, a board of county commissioners has no authority to enter into a contract for Blue Cross and/or Blue Shield coverage of the employees of the county where the premium for said insurance coverage under said contract will be paid from the general fund of the county.

Columbus, Ohio, May 11, 1961

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“The Board of County Commissioners of Lucas County wish to enter into a contract with Blue Cross and/or Blue Shield to provide hospitalization for Lucas County employees, the premium therefor to be paid by the County out of the General Fund.

“Among the beneficiaries will be employees under the direct supervision of the Commissioners as well as those in the employ of various elected County officials and appointed administrative board, all of which employees receive their compensation through the General Fund of Lucas County.

“May we kindly have your opinion as to whether the Commissioners have such authority.”

A general discussion of the basic rules governing the authority of boards of county commissioners, as well as counties generally, is found in 14 Ohio Jurisprudence 2d, page 259, Counties, Section 82, which reads as follows:

“The board of county commissioners is clothed with authority to do whatever the corporate or political entity, the county, might do if capable of rational action, except in respect to matters the cognizance of which is exclusively vested in some other officer or person. But counties possess only such powers and privileges as may be delegated to them by the legislature, and it follows, as a necessary consequence, that the powers of a board of county commissioners are statutory, both as to source and extent. The board is without power to increase or diminish its duties.

“Boards of county commissioners, being the creatures of statute, have such powers, and such only, as are conferred by statute or as are necessarily implied from those expressly given, and a board of county commissioners can act for and bind the county within the limits of such authority. Such implied powers exist only *ex necessitate* and to the extent that they are essential as an incident to the very existence of the board, or to the complete discharge of all the powers, duties, and obligations conferred upon it by law.”

In accordance with the above, it is clear that the board of county commissioners of Lucas County can only enter into those contracts which are either authorized by statute or which are necessary as an essential incident to some specific power, duty or obligation conferred by law; and upon examination of existing statutes, I have been unable to find any specific statutory authority which would authorize the contract involved herein.

Section 1739.15, Revised Code, specifically grants authority to all boards and commissions created by state law to deduct from the salary of any employee an amount sufficient to pay the premium required for Blue Cross coverage, *provided that the employee authorizes such deduction*. The Supreme Court of Ohio in the case of *State, ex rel. v. Price*, 168 Ohio St., 499, in passing on another question, has held that the deductions authorized in Section 1739.15, Revised Code, are valid and lawful. However, I can see no way that said section can be construed to authorize the use of the general funds of the county for payment of the premiums necessary to provide Blue Cross coverage to employees of the county.

Section 305.17, Revised Code, authorizing the county commissioners to fix and pay compensation to certain employees, is not broad enough to include as a power incident to it the payment of Blue Cross premiums from the county general fund.

There are, of course, several other sections of law dealing generally with the payment of premiums for group insurance. However, I have been

able to find no section which would permit the contract and expenditure here considered by the Lucas County board of commissioners.

In accordance with the above, it is my opinion and you are advised that, although under Section 1739.15, Revised Code, a county employee may authorize deductions from his salary for the payment of Blue Cross and Blue Shield premiums, a board of county commissioners has no authority to enter into a contract for Blue Cross and/or Blue Shield coverage of the employees of the county where the premium for said insurance coverage under said contract will be paid from the general fund of the county.

Respectfully,

MARK MCELROY

Attorney General