

**OPINION NO. 78-054****Syllabus:**

1. A township trustee may opt to participate in a group health insurance plan paid for in whole, or in part, by the township under R.C. 505.60, during his existing term in office, without violating Art. II, §20, Ohio Const., even though he had previously declined to participate in the plan, provided that participation in the plan was available to him at the commencement of his term in office.
2. A township trustee, who is appointed to fill an unexpired term in office, may opt to participate in a group health insurance plan paid for in whole, or in part, by the township under R.C. 505.60, without violating Art. II, §20, Ohio Const., even though the previous holder of the office did not participate in the plan, provided that the plan is available to township trustees prior to actual commencement of his holding of the office.

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**To: James R. Unger, Stark County Pros. Atty., Canton, Ohio**  
**By: William J. Brown, Attorney General, October 2, 1978**

I have before me your request for my opinion which raises the following questions:

1. Can a township, or other political subdivision which has in effect a policy of insurance pay the cost of all of the premiums thereof for an elected official who did not participate in such coverage at the beginning of his term but now desires to participate in such coverage during his term where the premiums for such insurance have not increased?
2. Can a township or other political subdivision pay the premiums of medical care insurance for an appointed official who succeeds an elected official during his term of office which elected official did not participate in such coverage where there was in effect in the subdivision a policy of medical care insurance where the premiums for such insurance have not increased during the term of office?

Township trustees are authorized to procure health and hospitalization coverage for themselves under R.C. 505.60. That section states:

The board of township trustees of any township may procure and pay all or any part of the cost of hospitalization, surgical, major medical, or sickness and accident insurance or a combination of any of the foregoing types of insurance provide uniform coverage for township officers and employees and their immediate dependents from the funds or budget from which said officers or employees are compensated for services, . . . Any township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers or employees. . . .

Under the Ohio Constitution, officers may not receive an increase in compensation during an existing term of office. Specifically, the state constitution provides:

The General Assembly, in cases not provided for in this constitution, shall fix the term 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. Ohio Const. art. II §20.

The provision applies to township trustees. State, ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62 (1975).

As you indicate in your letter, there is no question that payment of insurance premiums by a political subdivision for one of its officers is "compensation" within the purview of Ohio Const. Art. II, §20. State, ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389 (1976). Therefore, the sole issue raised by your first question is whether the trustee's refusal to accept insurance at the commencement of his term, even though the insurance was available, prevents that trustee from acceptance of the insurance at a later point during that term.

There appears to be no precedent on this precise issue, however, the authorities which touch upon Art. II, §20, consistently rely upon the fact that any increase in compensation must be in existence must be effect prior to the commencement of a term in order to be proper. For example, in 1972 Op. Att'y Gen. No. 72-059, I concluded that:

The payment of hospitalization benefits for a municipal official by an ordinance adopted after the beginning of the official's term is contrary to Article II, Section 20 of the Constitution of Ohio . . . . (Emphasis added.)

A similar rationale supported 1975 Op. Att'y Gen. No. 75-061, which dealt with group life insurance.

In construing a provision of the constitution, the primary objective is to effectuate the intended result. The goal of Art. II, §20, is clearly to prevent officeholders from voting themselves a "raise" during an existing term. Protection of public funds is, of course, the result. Where, as here, the officeholder at first declines to accept a portion of the compensation available to him, the public treasury is better off. The officeholder should not be penalized for declining insurance which was properly available to him at the beginning of his term. Indeed, the officeholder is asking for nothing more than would have been available to him all along. Therefore, the intended result of Art. II, §20, is achieved. Accordingly, it is my opinion that a township trustee, or any other officer of the state or political subdivision, may exercise an option to accept insurance paid for in whole or in part by the entity of which he is an officer during an existing term, without violating Art. II, §20, Ohio Const., even though he had previously declined such insurance, provided that the insurance was available to him at the commencement of the term in office.

Your second question involves a situation in which a township trustee was appointed to fill an unexpired term. Apparently, the former officeholder decided not to participate in the township's health insurance plan, even though it was available to him, however, the appointee wishes to participate. You ask whether Art. II, §20, prevents such participation. The issue appears to be resolved by State, ex rel. Glander v. Ferguson, 148 Ohio St. 589 (1947). In that case, it was held that the word "term" as used in Art. II, §20, applies only to the duration of the officeholder's stay in office, and not to the statutory term for the office. Thus, the Supreme Court held in Ferguson that it was permissible to pay a salary increase to an appointee who took office after the effective date of the legislation granting the increase, even though it became effective during the first portion of the statutory term for that office. Applied to your question, it is clear that the township trustee may exercise the option to participate in the health insurance plan, even though his predecessor did not participate.

Accordingly, it is my opinion, and you are so advised that:

1. A township trustee may opt to participate in a group health insurance plan paid for in whole, or in part, by the township under R.C. 505.60, during his existing term in office, without violating Art. II, §20, Ohio Const., even though he had previously declined to participate in the plan, provided that participation in the plan was available to him at the commencement of his term in office.
2. A township trustee, who is appointed to fill an unexpired term in office, may opt to participate in a group health insurance plan paid for in whole, or in part, by the township under R.C. 505.60, without violating Art. II, §20, Ohio Const., even though the previous holder of the office did not participate in the plan, provided that the plan is available to township trustees prior to actual commencement of his holding of the office.