

OPINION NO. 82-053**Syllabus:**

A board of county commissioners is authorized to pay, pursuant to R.C. 307.442, the amount of the deductible on a policy of liability insurance covering county officers and employees.

To: John W. Allen, Richland County Prosecuting Attorney, Mansfield, Ohio
By: William J. Brown, Attorney General, July 30, 1982

I have before me your request for my opinion concerning the provision of liability insurance for county officers and employees. It is my understanding, based on information furnished by a member of your staff, that your primary concern is with whether a board of county commissioners is authorized by statute to pay the amount of the deductible on a liability insurance policy.

The General Assembly has set forth two methods by which a board of county commissioners may provide liability coverage for county officers and employees. The first method, which involves the purchase of a liability insurance policy, is governed by R.C. 307.441. R.C. 307.441 lists the officers and employees for whom insurance coverage may be purchased and states that such coverage shall insure those officers and employees against liability arising from the performance of their official duties.

The second method, set forth in R.C. 307.442, consists of a self-insurance program pursuant to which a board of county commissioners may expend county funds to "indemnify or hold harmless the county officials specified in section 307.441 of the Revised Code and county employees and appointees, or any of the foregoing against liability, expense, loss, and damage which arises, or is claimed to have arisen, from the performance or nonperformance of official duties." A self-insurance program may be established "[r]egardless of whether the board of county commissioners of any county procures a policy or policies of liability insurance pursuant to . . . section 307.441." R.C. 307.442.

Your office has stated that the board of county commissioners intends to purchase a liability insurance policy for county officers and employees pursuant to R.C. 307.441. The policy provides for a deductible in the amount of \$2,500. Consequently, if a county officer or employee were to incur liability based on the performance of his official duties, the insurance company would pay, or would reimburse the employee or officer, only for the amount in excess of \$2,500. The initial \$2,500 would remain the obligation of the officer or employee.

As was previously discussed, R.C. 307.442 permits a board of county commissioners to indemnify, through a program of self-insurance, those county officers and employees who incur liabilities through the performance of their official duties. Moreover, R.C. 307.442 permits such indemnification to occur even when the county has purchased a policy of liability insurance pursuant to R.C. 307.441. The amount of the deductible is clearly a liability of the officer or employee. In addition, such liability would have arisen as the result of the performance of his official duties. See R.C. 307.441 (insurance policy may only cover liabilities arising from performance of official duties). Thus, R.C. 307.442 authorizes a board of county commissioners to indemnify a county officer or employee for the amount of the deductible on a liability insurance policy purchased in conformance with R.C. 307.441.

Of course, a board of county commissioners which intends to pay the amount of the deductible on a liability insurance policy using a program of self-insurance must fulfill the requirements set forth in R.C. 307.442 for the establishment of such a program. In addition, I note that the self-insurance program may only indemnify those officials specified in R.C. 307.441, county appointees and employees, against liability which arises or is claimed to have arisen through the performance or nonperformance of their official duties.

Therefore, it is my opinion, and you are advised, that a board of county commissioners is authorized to pay, pursuant to R.C. 307.442, the amount of the deductible on a policy of liability insurance covering county officers and employees.