

**OPINION NO. 82-076**

**Syllabus:**

A board of township trustees may not expend township funds to pay the medical claims of its officers and employees that were incurred during a period in which there was an interruption in the medical insurance coverage provided pursuant to R.C. 505.60 due to the bankruptcy of the insurer.

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**To: John J. Plough, Portage County Prosecuting Attorney, Ravenna, Ohio**  
**By: William J. Brown, Attorney General, September 28, 1982**

I have before me your request for my opinion concerning the authority of a board of township trustees to pay the outstanding medical claims of township

employees. It is my understanding, based on information provided by a member of your staff, that this question arises in the context of the following facts.

In April, 1980, the Ravenna township board of trustees obtained medical coverage for its employees through National Employers Trust (NET). On September 10, 1980, the board of trustees received a notice from the Commonwealth of Pennsylvania informing them that NET was in an unstable financial condition and had been ordered by the Pennsylvania Department of Insurance to cease the payment of claims. NET was subsequently permitted to pay claims arising through July 31, 1980. As of September 1, 1980, medical coverage was provided through another insurance company. NET has currently filed for bankruptcy in federal court in Pennsylvania. Thus, although medical coverage for township employees was in effect until July 31, 1980 and was reinstated on September 1, 1980, there was no medical insurance which would cover claims incurred in August of 1980. The board of township trustees has asked whether it has the authority to reimburse its employees for claims which arose in August of 1980.

The analysis of your question must begin with the basic premise that "[t]he authority to act in financial transactions must be clear and distinctly granted" and that any doubt concerning the authority to expend public funds must be resolved against the expenditure. State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916). The General Assembly has authorized a board of township trustees to provide medical benefits to its officers and employees. That grant of authority, contained in R.C. 505.60(A), reads as follows:

The board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance, to provide uniform coverage for township officers and employees and their immediate dependents from the funds or budgets from which said officers or employees are compensated for services, whether issued by an insurance company, a hospital service association organized under Chapter 1739. of the Revised Code, medical care corporation organized under Chapter 1737. of the Revised Code, a dental care corporation organized under Chapter 1740. of the Revised Code, or a hospital service association in conjunction with an insurance company duly authorized to do business in this state. Any township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers and employees.

The board may also contract for group insurance or health care services with health care corporations organized under Chapter 1738. of the Revised Code and health maintenance organizations organized under Chapter 1742. of the Revised Code, provided that each officer and employee is permitted to:

(1) Choose between a plan offered by an insurance company, hospital service association, medical care corporation, dental care corporation, or a hospital service association in conjunction with an insurance company and a plan offered by a health care corporation or health maintenance organization, and provided further that the officer or employee pays any amount by which the cost of the plan chosen by him exceeds the cost of the plan offered by the board under this section;

(2) Change his choice under division (A) of this section at a time each year as determined in advance by the board.

Pursuant to R.C. 505.60, therefore, a board of township trustees may procure health insurance for its officers and employees from the specified types of

organizations.<sup>1</sup> R.C. 505.60 does not, however, expressly authorize a board of township trustees to pay directly its employees' medical claims.

I note that in those instances in which the General Assembly has permitted a political subdivision to institute a program pursuant to which the subdivision, rather than an insurance company, would pay the claims of its officers and employees, it has done so expressly. See R.C. 307.442 (authorizes county and joint county self-insurance liability programs); see also R.C. 124.87 (state employee compensation board may establish a state employee benefit fund for payment of medical claims). Moreover, I note that when the General Assembly has granted such power, it has also imposed restrictions upon how the program may be administered. For example, boards of county commissioners who intend to provide liability insurance pursuant to R.C. 307.442 must hold funds in reserve, submit an annual report to the superintendent of insurance and obtain an opinion of an independent actuarial firm as to whether the reserve amounts are sufficient. Cf. R.C. 124.87 (sets forth procedural requirements for establishing a state employee benefit fund).

There is no express grant of authority for a board of township trustees to pay the medical claims of its employees. In addition, there is a complete absence of any of the safeguards which the General Assembly has required of similar programs. As was previously stated, any doubt regarding the authority to expend public funds must be resolved against the expenditure. I must conclude, therefore, that a board of township trustees may not directly pay the medical claims of its officers and employees.

It is true that in 1981 Op. Att'y Gen. No. 81-069 I concluded that a board of county commissioners may pay a portion of the medical claims of its employees. This conclusion, however, was based on the fact that the payments were made pursuant to a policy of insurance which the county had obtained in conformance with R.C. 305.171(A). That policy obligated the board of county commissioners to pay claim costs up to a predetermined definite level. The insurance company assumed the payment of claims beyond that predetermined level. I stated in Op. No. 81-069 that the payment of a pre-established amount of claims pursuant to an insurance policy was permissible "so long as the purchase of the insurance is from one of the entities specified in the statute." Op. No. 81-069, at 2-284. The facts in Op. No. 81-069 are, therefore, clearly distinguishable from those presented by your letter due to the fact that the payments to be made by the board of township trustees would not be made under the terms of an insurance policy. Thus, the conclusions reached in Op. No. 81-069 do not constitute authority for the expenditure of township funds in the manner set forth in your letter.

In reaching the conclusion that a board of township trustees is not authorized to directly pay its employees' medical claims, I have considered the effect of the Ohio Supreme Court's decision in Ebert v. Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). Under the analysis used by the Court in Ebert, a board of township trustees has the authority, derived from its power to employ and compensate, to award fringe benefits to its employees. See 1981 Op. Att'y Gen. No. 81-061. Such power may, however, be exercised only in the absence of constricting statutory authority. As I noted in 1981 Op. Att'y Gen. No. 81-052, at 2-202:

Once the requisite authority to compensate has been established, any statutory provisions pertinent to the provision of the particular fringe benefit in issue by the public employer to its employees must be identified. . . . If an applicable statute limits the general authority of the public employer to compensate its employees with the particular fringe benefit in question, it must, of course, be viewed as a restriction upon the employer's authority to grant the particular benefit.

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<sup>1</sup>R.C. 505.60 also permits a board of township trustees to contribute to a health and welfare trust in conjunction with a collective bargaining agreement. It is my understanding that there is no such agreement applicable to Ravenna township employees.

I believe the preceding paragraphs have demonstrated that a board of township trustees may only provide medical benefits in conformance with R.C. 505.60. R.C. 505.60, therefore, must be seen as a restriction upon the authority of a board of township trustees to provide medical benefits to its employees in the manner described in your letter.

Therefore, it is my opinion, and you are advised, that a board of township trustees may not expend township funds to pay the medical claims of its officers and employees that were incurred during a period in which there was an interruption in the medical insurance coverage provided pursuant to R.C. 505.60 due to the bankruptcy of the insurer.