

OPINION NO. 81-099**Syllabus:**

An increase in the cost of the insurance coverage furnished to elected township and county officers, without a corresponding increase in the extent of the insurance benefits, is not an in-term increase in compensation prohibited by Ohio Const. art. II, §20. (1980 Op. Att'y Gen. No. 80-002, overruled in part; 1976 Op. Att'y Gen. No. 76-058 overruled.)

To: Frederick D. Pepple, Auglaize County Pros. Atty., Wapakoneta, Ohio
By: William J. Brown, Attorney General, December 21, 1981

I have before me your request for my opinion concerning an increase in the cost of the insurance coverage furnished to elected township and county officers pursuant to R.C. 505.60 and R.C. 305.171. It is my understanding, based on conversations between a member of my staff and your office, that your question arises in the context of the following facts. Prior to the date on which certain township trustees and county commissioners were to take office, a policy of insurance was secured for their benefit. During the term in office of those officials, the cost of providing the insurance benefits increased, although the coverage remained the same. The premiums for this coverage were paid for by the township and county out of public funds. Your specific concern is with whether the payment of such an increase in the premium cost would constitute an in-term increase in compensation in violation of Ohio Const. art. II, §20.

Increases in the compensation of public officers are governed by art. II, §20, which reads as follows:

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.

Thus, pursuant to this section of the Ohio Constitution, the compensation of a public officer may not be increased or decreased during his term of office. Township trustees and county commissioners, and other elected township and county officials, are, of course, public officers subject to the dictates of art. II, §20. See, e.g., State ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975); State ex rel. DeChant v. Kelser, 133 Ohio St. 429, 14 N.E.2d 350 (1938).

Once it is concluded that the compensation of a township or county officer must remain constant during his term of office, the next question becomes whether fringe benefits such as insurance coverage are to be considered a form of "compensation." This issue was settled by the Ohio Supreme Court in State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692, 694 (1976), when the Court stated that:

Fringe benefits, such as the payments [for insurance coverage] made here, are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check. It is obvious that an office holder is benefitted [sic] 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.

Insurance benefits for public officers paid for out of public funds are, therefore, compensation which comes within the purview of art. II, §20.

In 1980 Op. Att'y Gen. No. 80-002, I was asked, among other things, to opine on a question identical to the one presented by your letter. On the basis of the language used in Parsons and State ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975), I felt constrained to conclude that art. II, §20 prohibited "payment through public funds of in-term increases in the cost of health insurance benefits." Op. No. 80-002 at 2-10 (clarifying 1976 Op. Att'y Gen. No. 76-058). Since the issuance of Op. No. 80-002, however, the question of an increase in the cost of insurance coverage has been the subject of a decision by a court of appeals. In Collins v. Ferguson, No. 80AP-245 (Ct. App. Franklin County July 22, 1980), the Franklin County Court of Appeals held that the situation described in your letter and in the prior opinions of this office was distinguishable from the Parsons case due to the fact that the "plaintiff office holders were getting the insurance benefits prior to their terms and received absolutely no increased benefits during their term. . . . The law as laid down by the Supreme Court in Parsons would not apply therefore to the facts in the present case." The court concluded that an increase in the cost of the insurance without a corresponding expansion in coverage benefits did not constitute an increase in compensation for purposes of art. II, §20. In light of the holding in Collins, the conclusion reached in Op. No. 80-002 and Op. No. 76-058 that an increase in the cost of insurance coverage is an increase in compensation prohibited by art. II, §20 must be overruled.

Therefore, it is my opinion, and you are advised, that an increase in the cost of the insurance coverage furnished to elected township and county officers, without a corresponding increase in the extent of the insurance benefits, is not an in-term increase in compensation prohibited by Ohio Const. art. II, §20. (1980 Op. Att'y Gen. No. 80-002, overruled in part; 1976 Op. Att'y Gen. No. 76-058 overruled.)