

OPINION NO. 77-048**Syllabus:**

1. Contract agencies of a community mental health and retardation board may properly expend funds for fringe benefits such as group health and life insurance for its employees, provided that such benefits are approved by the board, pursuant to R.C. 340.03(H).
2. A community mental health and retardation board may, pursuant to R.C. 340.03(D) and (E), include a provision relating to fringe benefits in its agreement with a contract agency.
3. A community health and mental retardation board may, pursuant to R.C. 340.03(D) and (E) act as principal in procuring group insurance benefits for employees of a contract agency.

To: James R. Unger, Stark County Pros. Atty., Canton, Ohio
By: William J. Brown, Attorney General, September 14, 1977

Your request for my opinion raises several questions which may be summarized as follows:

1. May a contract agency of a community

mental health and retardation (648) board expend funds for fringe benefits such as group health and life insurance for its employees?

2. Can such fringe benefits be included in a contract between a 648 board and a contract agency?
3. Can a 648 board, pursuant to agreement with its contract agencies, act as principal in procuring group insurance for its employees and for contract agency employees?

In answer to your first question, it should be noted that the methods and rates of compensation used by a private entity are incidents of the employee-employer relationship. Ordinarily, such an organization need not have statutory authorization in order to fix compensation for its employees, even if the source of the funds is a contract with a governmental body. However, R.C. 340.03(H) varies this general rule by allowing a community mental health and retardation board the authority to:

Approve salary schedules for employees and consultants in agencies and facilities maintained and operated, in whole or in part, or by contract, under the direction of the board;

This section gives a board the power to approve salary schedules for employees of a contract agency.

The term "salary" has been held to be the functional equivalent of "compensation" for the purpose of Ohio Const., Art. II, §20. State ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62 (1975). The Ohio Supreme Court, in State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 391 (1976), commented that:

Fringe benefits . . . 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 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 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.

See also 1976 Op. Att'y Gen. No. 76-058; 1975 Op. Att'y Gen. No. 75-014; and 1975 Op. Att'y Gen. No. 75-004.

Thus for the purpose of Article II, Section 20, Ohio Constitution which prohibits in-term increases in the salaries of officers who are the subject of that section, "salary" is synonymous with "compensation". This common sense approach is equally applicable to the instant situation, so the power of the board to approve salary schedules of contract agencies

would also include the power to approve schedules for fringe benefits, including group insurance. It is therefore my opinion that contract agencies of 648 boards may properly expend funds for fringe benefits such as group health and life insurance for its employees, provided that provision of such benefits is approved by the community mental health and retardation board pursuant to R.C. 340.03(H).

Your second question concerns the propriety of including such fringe benefits in a contract between a 648 board and a contract agency. R.C. 340.03(D) enables a board to enter into and implement working agreements with private social agencies. In addition, R.C. 340.03(E) gives a board authority to:

Enter into contracts with state hospitals, other public agencies, and with private or voluntary nonprofit agencies for the provision of mental health and mental retardation service and facilities.

Necessarily implied from this power to contract is the authority to set specific contractual terms. The provision of fringe benefits to employees of a contract agency is as appropriate a term as any other that might be included in such a contract. It is my opinion that a 648 board has the authority pursuant to R.C. 340.03(D) and (E) to include a provision relating to fringe benefits in its agreement with a contract agency.

Your last inquiry concerns the authority of a community mental health and retardation board to act as principal for purposes of procuring group insurance for contract agency employees. As previously stated, R.C. 340.03(D) and (E) enable the board to enter into contracts with private social agencies, other private or non-profit agencies and public agencies. This grant of authority to a 648 board enables it to fix the terms of such contracts. A provision in such a contract requiring the board to act as principal in procuring insurance is an appropriate term for a contract and a 648 board may include it in its agreement with a contract agency. Accordingly, it is my opinion that a community mental health and retardation board may properly agree to act as principal in procuring group insurance benefits for employees of a contract agency, pursuant to authority necessarily implied from R.C. 340.03(D) and (E).

You have expressed some concern as to the handling of the purchase money for the insurance for contract agency employees. Specifically, you have inquired as to the specific contractual terms that would be required in the agency contract to implement the board's role as principal in procuring group insurance for the contract agency employees. In light of the foregoing discussion, it is apparent that a community mental health and retardation board has the power to enter into contracts with contract agencies and to agree to such terms as it judges necessary for the formation and implementation of the contract. Accordingly, a 648 board is not limited to any one method of handling the purchase money for the insurance coverage contracted for with the agency. The determination as to whether terms for such coverage are proper would have to be made on a case-by-case basis. Therefore, it would be inappropriate for me to attempt to delineate specific contractual terms.

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

1. Contract agencies of a community mental health and

retardation board may properly expend funds for fringe benefits such as group health and life insurance for its employees, provided that such benefits are approved by the board, pursuant to R.C. 340.03(H).

2. A community mental health and retardation board may, pursuant to R.C. 340.03(D) and (E), include a provision relating to fringe benefits in its agreement with a contract agency.
3. A community health and mental retardation board may, pursuant to R.C. 340.03(D) and (E) act as principal in procuring group insurance benefits for employees of a contract agency.