

OPINION NO. 2005-038**Syllabus:**

1. Pursuant to R.C. 505.60(C), a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township's health care plan. (1992 Op. Att'y Gen. No. 92-068 (syllabus, paragraph four) and 1990 Op. Att'y Gen. No. 90-053, modified due to statutory change.)
2. Pursuant to R.C. 505.601, if a board of township trustees chooses not to provide health care coverage to its officers and employees in accordance with R.C. 505.60, the board may reimburse an officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of spouse of the officer or employee, but for only those insurance policies described in R.C. 505.60(A), and only if the township adopts a resolution in accordance with R.C. 505.601(A)-(C) that authorizes such reimbursement.
3. Neither R.C. 505.60(C) nor R.C. 505.601 authorizes a township to pay directly to the employer of the spouse of a township officer or employee the cost of health care coverage attributable to the officer or employee under a health care plan provided to the spouse of the township officer or employee by the spouse's employer.

To: Roger D. Nagel, Fulton County Prosecuting Attorney, Wauseon, Ohio
By: Jim Petro, Attorney General, October 28, 2005

You have requested an opinion concerning the authority of a township to reimburse a township officer or employee for the cost of health care coverage obtained through the employer of the spouse of the officer or employee. You specifically ask:

1. Under what circumstances, if any, may a board of township trustees reimburse its employees or officers for health insurance coverage for township employees or officers obtained through the employer of the spouse of the township officer or employee?
2. Can a board of township trustees pay directly to the employer of the spouse of a township officer or employee that portion of the cost of health insurance premium the employer attributes to the coverage provided the township's officer or employee?

The reimbursement of township officers and employees for health insurance coverage obtained other than through the township is addressed in two statutes, R.C. 505.60 and R.C. 505.601. Let us first examine R.C. 505.60, which states, in pertinent part:

(A) As provided in this section and [R.C. 505.601], 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 for township officers and employees. The board of township trustees of any township may negotiate and contract for the purchase of a policy of long-term care insurance for township officers and employees pursuant to [R.C. 124.841].

(B) If the board procures any insurance policies under this section, the board shall provide uniform coverage under these policies for township officers and full-time township employees and their immediate dependents, and may provide coverage under these policies for part-time township employees and their immediate dependents, from the funds or budgets from which the officers or employees are compensated for services, such policies to be issued by an insurance company duly authorized to do business in this state

The board may also contract for group health care services with health insuring corporations holding certificates of authority under [R.C. Chapter 1751] for township officers and employees

* * *

(C) *If any township officer or employee is denied coverage under a health care plan procured under division (B) of this section or if any township officer or employee elects not to participate in the township's health care plan, the township may reimburse the officer or employee for each out-of-pocket premium that the officer or employee incurs for insurance policies described in division (A) of this section that the officer or employee otherwise obtains, but not to exceed an amount equal to the average premium paid by the township for its officers and employees under policies it procures under division (B) of this section. (Emphasis added.)*

Thus, R.C. 505.60(C) authorizes reimbursement of a township officer or employee for out-of-pocket premiums for health care coverage the officer or employee otherwise obtains if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township's health care plan.

R.C. 505.601 makes similar provision for the reimbursement of a township

officer or employee if the township does not procure health care coverage for township personnel under R.C. 505.60,¹ as follows:

If a board of township trustees does not procure an insurance policy or group health care services as provided in section 505.60 of the Revised Code, the board of township trustees may reimburse any township officer or employee for each out-of-pocket premium that the officer or employee incurs for insurance policies described in division (A) of section 505.60 of the Revised Code that the officer or employee otherwise obtains, if all of the following conditions are met:

(A) The board of township trustees adopts a resolution that states that the township has chosen not to procure a health care plan under section 505.60 of the Revised Code and has chosen instead to reimburse its officers and employees for each out-of-pocket premium that they incur for insurance policies described in division (A) of section 505.60 of the Revised Code that they otherwise obtain.

(B) That resolution provides for a uniform maximum monthly or yearly payment amount for each officer or employee, beyond which the township will not reimburse the officer or employee.

(C) That resolution states the specific benefits listed in division (A) of section 505.60 of the Revised Code for which the township will reimburse all officers and employees of the township. The township may not reimburse officers and employees for benefits other than those listed in division (A) of section 505.60 of the Revised Code. (Emphasis added.)

Both R.C. 505.60(C) and R.C. 505.601 state that a township may “reimburse” a township officer or employee, up to a fixed amount,² for “each out-of-

¹ Before the addition of division (C) to R.C. 505.60 and the enactment of R.C. 505.601 in 1999-2000 Ohio Laws, Part I, 1213 (Am. Sub. H.B. 187, eff. Sept. 20, 1999), 1992 Op. Att’y Gen. No. 92-068 concluded in paragraph four of the syllabus that, “[a] board of township trustees has no authority to procure hospital insurance for a township trustee and the trustee’s dependents by paying for coverage under a plan offered by the trustee’s private employer.” Similarly, 1990 Op. Att’y Gen. No. 90-053 concluded in the syllabus that, “R.C. 505.60 does not empower a board of township trustees to reimburse a township officer, who was denied coverage by the township’s regular health insurance carrier, the cost of the trustee’s independently obtaining health insurance coverage through her outside employment.” Because of the reimbursement provisions now contained in R.C. 505.60(C) and R.C. 505.601, however, we must modify 1992 Op. Att’y Gen. No. 92-068 (syllabus, paragraph four) and 1990 Op. Att’y Gen. No. 90-053 to conform to the reimbursement authority now conferred upon boards of township trustees by R.C. 505.60(C) and R.C. 505.601.

² R.C. 505.60(C) limits the reimbursement to no more than “an amount equal to the average premium paid by the township for its officers and employees under poli-

pocket premium that the officer or employee incurs for insurance policies described in [R.C. 505.60(A)] that the officer or employee otherwise obtains.’³

Your first question concerns the authority of a township to reimburse a township officer or employee for health care coverage afforded such officer or employee through insurance provided by the employer of the spouse of the officer or employee. Assuming that there is an additional cost, *i.e.*, out-of-pocket expense, to the spouse of the officer or employee for the health care coverage provided for the township officer or employee through the employer of the spouse, we believe that both R.C. 505.60(C) and R.C. 505.601 authorize a township to reimburse the township officer or employee for such expense under the conditions outlined in each statute. *See generally* notes two and three, *supra*.

Both R.C. 505.60(C) and R.C. 505.601 describe the amount for which a township may reimburse an officer or employee as “each out-of-pocket premium that the officer or employee incurs for insurance policies described in [R.C. 505.60(A)] that the officer or employee otherwise obtains.” A literal reading of this language limits the out-of-pocket premiums for which a township may reimburse an office or employee to those “the officer or employee incurs” for insurance policies described in R.C. 505.60(A) that the officer or employee obtains other than through the township. As defined in *Webster’s Third New International Dictionary Unabridged* 1146 (1993), the verb “incur” means, in part, to “become liable or subject to.” The subject of the verb “incurs,” as used in R.C. 505.60 and R.C. 505.601, is township “officer or employee.” Thus, a literal reading of R.C. 505.60 and R.C. 505.601 would authorize a township to reimburse a township officer or

employee it procures under [R.C. 505.60(B)].” R.C. 505.601(B) requires a township that establishes a reimbursement policy in lieu of providing health care coverage under R.C. 505.60 to include in the resolution establishing the reimbursement policy “a uniform maximum monthly or yearly payment amount for each officer or employee, beyond which the township will not reimburse the officer or employee.”

³ Because the reimbursement powers conferred upon a board of township trustees by R.C. 505.60 and R.C. 505.601 differ, a board of township trustees must indicate in the adopting resolution under which of the two statutes it intends to proceed, and thereafter adhere to the specific terms and limitations established by that statute. We also note that the reimbursement provisions of R.C. 505.60 and R.C. 505.601 are mutually exclusive. If a township chooses to make health care coverage available to its officers and employees under R.C. 505.60, the township may offer them reimbursement only as specified in R.C. 505.60(C). In contrast, R.C. 505.601 authorizes a township to offer its officers and employees reimbursement under the terms set forth therein only if the township has elected *not* to provide health care coverage under R.C. 505.60. Accordingly, a township that elects to provide health care coverage under R.C. 505.60 may not offer reimbursement under the terms described in R.C. 505.601, and a township that chooses not to offer health care coverage under R.C. 505.60 may not offer reimbursement under the terms described in R.C. 505.60.

employee, rather than the spouse of the officer or employee, becomes liable. We believe such a literal reading of these statutory provisions, however, must be rejected.

Rather, as stated in *Lake County Nat'l Bank v. Kosydar*, 36 Ohio St. 2d 189, 192, 305 N.E.2d 799 (1973), if "adherence to the plain and ordinary meaning of the word [in a statute] would defeat the legislative purpose in the enactment of the statute, . . . 'the strict letter of an act must * * * yield to its evident spirit and purpose * * *.'" *Fleischmann Construction Co. v. United States* (1926), 270 U.S. 349, 360." By authorizing townships to reimburse their officers and employees for out-of-pocket expenses for health care coverage obtained other than through the township, the General Assembly clearly intended to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel. See generally *Miller v. Fairley*, 141 Ohio St. 327, 48 N.E.2d 217 (1943) (syllabus, paragraph two) ("[s]tatutes are to be read in the light of attendant circumstances and conditions, and are to be construed as they were intended to be understood, when they were passed"). As a general rule, coverage of a couple or family under a single health care plan is more economical than covering each individual separately. Thus, if a township officer or employee were eligible for health care coverage through the employer of the spouse of the officer or employee, the township's payment of the additional cost of adding the township officer or employee to the spouse's existing coverage will generally result in a much lower cost for health care coverage to the township and to the officer or employee.

In addition, we must assume that the General Assembly was aware of the common practice of both public and private employers, when providing health care coverage for an employee, to offer coverage to the employee's spouse and family as well. Had the General Assembly intended not to include reimbursement to a township officer or employee who is eligible to receive health care coverage under a spouse's available coverage, it could easily have added to the other restrictions on reimbursement in R.C. 505.60 and R.C. 505.601 language that would expressly exclude reimbursement for health care coverage provided through the employer of the spouse of the township officer or employee. That it did not do. We assume, therefore, that the General Assembly intended that, should a township officer or employee obtain health care coverage through the employer of the spouse of that officer or employee, as is often the case, R.C. 505.60 and R.C. 505.601 authorize the board of township trustees to reimburse the officer or employee for the out-of-pocket premium attributable to the coverage provided for that officer or employee.

In answer to your first question, we conclude that, pursuant to R.C. 505.60(C), a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township's health care plan. Pursuant to R.C. 505.601, if a board of township trust-

ees chooses not to provide health care coverage to its officers and employees in accordance with R.C. 505.60, the board may reimburse an officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of the spouse of the officer or employee, but for only those insurance policies described in R.C. 505.60(A), and only if the township adopts a resolution in accordance with R.C. 505.601(A)-(C) that authorizes such reimbursement.

Your second question asks whether a board of township trustees may pay directly to the employer of the spouse of a township officer or employee that portion of the cost of health insurance premium the employer attributes to the coverage provided the township's officer or employee. Both R.C. 505.60 and R.C. 505.601 use the word "reimburse" to describe the manner in which a board of township trustees may pay a township officer or employee for out-of-pocket premiums for health care coverage obtained by the officer or employee. As defined in *Webster's New World Dictionary* (2d college ed. 1978) 1197, "reimburse" means "1. to pay back (money spent) 2. to repay or compensate (a person) for expenses, damages, losses, etc." The word "reimburse" thus suggests that the reimbursing party makes payment for something only after the party to be reimbursed has paid out a sum. Accordingly, pursuant to R.C. 505.60(C) and R.C. 505.601, a township may pay for health care coverage provided for a township officer or employee through the employer of the spouse of the officer or employee only by making payment to the officer or employee after the cost of coverage attributable to the officer or employee has been paid. See generally *Akron Transportation Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493 (1951) ("when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner"). In answer to your second question, we conclude, therefore, that neither R.C. 505.60(C) nor R.C. 505.601 authorizes a township to pay directly to the employer of the spouse of a township officer or employee the cost of health care coverage attributable to the officer or employee under a health care plan provided to the spouse of the township officer or employee by the spouse's employer.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 505.60(C), a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township's health care plan. (1992 Op. Att'y Gen. No. 92-068 (syllabus, paragraph four) and 1990 Op. Att'y Gen. No. 90-053, modified due to statutory change.)
2. Pursuant to R.C. 505.601, if a board of township trustees chooses not to provide health care coverage to its officers and employees in accordance with R.C. 505.60, the board may reimburse an officer or

employee for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of the spouse of the officer or employee, but for only those insurance policies described in R.C. 505.60(A), and only if the township adopts a resolution in accordance with R.C. 505.601(A)-(C) that authorizes such reimbursement.

3. Neither R.C. 505.60(C) nor R.C. 505.601 authorizes a township to pay directly to the employer of the spouse of a township officer or employee the cost of health care coverage attributable to the officer or employee under a health care plan provided to the spouse of the township officer or employee by the spouse's employer.