

OPINION NO. 81-045**Syllabus:**

By virtue of the express statutory grants in R.C. 9.90 and R.C. 3313.202, a board of education is authorized to provide health and medical insurance to its employees pursuant to an insurance plan which obligates the board to pay claim costs up to a predetermined definite level and under which the insurance company assumes the indeterminable risks inherent in the employee coverage.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, August 20, 1981

I have before me your request for my opinion concerning the authority of a board of education to provide health and medical coverage to its employees pursuant to an insurance plan under which the board itself pays employee health and medical claims up to a specified, cumulative amount and the insurance company pays only those claims in excess of the specified amount.

The specific question you pose is:

Recognizing that a board of education has specific statutory authority to purchase health and medical insurance of various types for its employees pursuant to Sections 9.90 and 3313.202, Revised Code, may a board of education provide similar protection through an insurance plan which encompasses both the payment of a minimum premium payable monthly to the insurer for its administrative services, processing of claims and the insurance for claim costs exceeding the predetermined maximum amount, and claim payments as required for claim costs up to the predetermined maximum amount?

In conjunction with this question, you have provided, and I have examined, a document entitled "A Minimum Premium Proposal," from which I have distilled several fundamental aspects of the proposed plan. Under the proposed plan, the policyholder board of education agrees to pay employee health and medical claim costs up to a predetermined maximum amount, which amount is calculated by reference to the "monthly attachment factor." In any given year, then, the board of education pays cumulative claim costs equal to the predetermined annual maximum amount and the insurance company pays those claim costs which exceed the maximum amount. All claims are processed by the insurance company. The insurance company, under the minimum premium plan, also guarantees the payment of all benefits described in the policy. The board of education pays the insurance company a monthly "minimum" premium payment for each employee for the administrative services of the insurance company and for coverage by the insurance company of those claim costs in excess of the predetermined maximum level. Comparatively speaking, the total expenditure for which the board is obligated under the minimum premium plan—the claim costs and the minimum premium—is less than the premium cost for the same employee coverage under a typical insurance plan.

As you recognize, R.C. 9.90 and R.C. 3313.202 constitute statutory authority for a board of education to provide health and medical coverage to its employees. Clearly, if the proposed plan falls within the scope of authority contained in either R.C. 9.90 or R.C. 3313.202, it represents a proper method for a board of education to provide health and medical coverage to its employees.

Neither R.C. 9.90 nor R.C. 3313.202, however, constitutes a general grant of authority for a board of education to provide its employees with any type of insurance or coverage by any method available; each grant of authority is confined

to the provision of specified types of coverage by specified methods. The proposed plan, then, is authorized by R.C. 9.90 or R.C. 3313.202 only if it may be concluded that its terms are within the scope of either statutory grant of authority.

R.C. 9.90 provides, in pertinent part:

(A) . . . [T]he board of education of any school district, may, in addition to all other powers provided in the Revised Code:

(1) Contract for, purchase, or otherwise procure from an insurer or insurers licensed to do business by the state of Ohio for or on behalf of such of its employees as it may determine, life insurance, or sickness, accident, annuity, endowment, health, medical, hospital, dental, or surgical coverage and benefits, or any combination thereof, by means of insurance plans or other types of coverage, family, group or otherwise, and may pay from funds under its control and available for such purpose all or any portion of the cost, premium, or charge therefor; (Emphasis added.)

R.C. 3313.202 also specifically authorizes a board of education to procure health and medical coverage for its employees:

The board of education of a school district may procure and pay all or part of the cost of group term life, hospitalization, surgical, or major medical insurance, or a combination of any of the foregoing types of insurance or coverage, whether issued by an insurance company or hospital service association duly licensed by this state, covering the teaching or non-teaching employees of the school district, or a combination of both. . . . (Emphasis added.)

Clearly, the proposed plan falls within the parameters of both R.C. 9.90 and R.C. 3313.202. By its terms, R.C. 9.90 authorizes the provision of health and medical coverage and benefits by means of insurance plans or other types of coverage procured from an insurer licensed to do business in the State of Ohio. Indulging the assumption that the insurer in the proposed plan is licensed to do business in the State of Ohio, I readily conclude that the proposed plan represents "insurance. . . or other types of coverage." The Supreme Court of Ohio has answered the question "What is insurance?" as follows: "Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay him or his nominee a certain or ascertainable sum of money on a specified contingency." State ex rel. Duffy v. Western Auto Supply Co., 134 Ohio St. 163, 168, 16 N.E.2d 256, 258-59 (1938) (quoting 32 Corpus Juris 975). Applying this definition to the proposed plan herein, I find that the minimum premium plan does constitute "insurance." The terms of the minimum premium plan are specifically set out in the contract of insurance entered into by the insurance company and the policy holder board of education. Although the board of education is obligated under the contract to pay claim costs up to a specified and definite amount, the insurance company does in fact assume all actual indeterminable risks involved in the employee coverage offered under the plan by promising to pay all claims above the predetermined definite amount. Furthermore, since the insurance company guarantees the benefits under the proposed plan, the insurance company also assumes any ultimate risks inherent in the claim costs to which the board of education is obligated under the plan.

Similarly, it must be concluded that the proposed plan is expressly authorized under R.C. 3313.202. R.C. 3313.202 authorizes a board of education to "procure and pay all or part of. . . the foregoing types of insurance or coverage [hospitalization, surgical, or major medical], whether issued by an insurance company or hospital service association duly licensed by this state." And, as concluded in the discussion above, the proposed plan certainly constitutes insurance or other coverage for hospitalization and other medical expenses.

Based on the foregoing, I conclude that a board of education has the express:

statutory authority to provide health and medical coverage to its employees pursuant to the proposed minimum premium plan under both R.C. 3313.202 and R.C. 9.90.

Therefore, it is my opinion, and you are advised, that by virtue of the express statutory grants in R.C. 9.90 and R.C. 3313.202, a board of education is authorized to provide health and medical insurance to its employees pursuant to an insurance plan which obligates the board to pay claim costs up to a predetermined definite level and under which the insurance company assumes the indeterminable risks inherent in the employee coverage.