

**Note from the Attorney General's Office:**

1992 Op. Att'y Gen. No. 92-068 was modified in part  
by 2005 Op. Att'y Gen. No. 2005-038.

**OPINION NO. 92-068****Syllabus:**

1. Since no competitive bidding requirement is imposed by statute, a board of township trustees may, pursuant to R.C. 505.60, purchase hospital or medical insurance from a private company without obtaining bids.
2. Ohio Const. art. II, §20 prohibits any change in the compensation of a township trustee during the trustee's existing term; accordingly, the purchase of health or hospitalization insurance for a township trustee must be authorized by resolution before the trustee's term begins.
3. If a board of township trustees procures hospital or medical coverage for a township trustee, the board must procure the

same coverage for the trustee's immediate dependents; the board may pay all or any part of the cost of coverage for the township trustee and the trustee's immediate dependents.

4. 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.
5. R.C. 505.60(A) requires that, if a board of township trustees procures health benefits for any township officers or full-time employees, the coverage must be uniform for all township officers and full-time employees and their immediate dependents; there is no requirement that the premium charged or amount paid must be the same for each township trustee.
6. A board of township trustees may expend for health coverage of township officers and employees and their immediate dependents such amounts as it deems appropriate, provided that such amounts are available in the funds or budgets from which the township officers or employees are compensated for services.

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**To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio**  
**By: Lee Fisher, Attorney General, December 29, 1992**

You have requested an opinion on several questions relating to the purchase of hospital and medical benefits by township trustees.<sup>1</sup> A board of township trustees is a creature of statute, having only such powers as it is granted by statute. *See, e.g., Hopple v. Trustees of Brown Township*, 13 Ohio St. 311 (1862). Where the power in question involves the expenditure of public funds, it must be clearly and distinctly granted. *See, e.g., State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916).

#### **Competitive Bidding Is Not Required**

Your first question is whether the township trustees are authorized to purchase hospital or medical insurance from private companies without obtaining bids. R.C. 505.60(A) authorizes a board of township trustees to procure and pay all or any part of the cost of insurance policies that provide hospital or medical benefits. There is no express requirement that a competitive bidding process be followed. R.C. 505.60(A) also authorizes a board of township trustees to obtain health benefits from health care corporations or health maintenance organizations. Again, there is no mention of a bidding requirement.

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<sup>1</sup> It appears that your questions are addressed primarily to the purchase of insurance policies for hospital and medical coverage, governed by the first paragraph of R.C. 505.60(A). This opinion also considers contracts with health care corporations and health maintenance organizations, which are governed by the second paragraph of R.C. 505.60(A).

In addition to those methods of obtaining coverage, R.C. 505.60 permits a board of township trustees to provide hospital and medical benefits through a self-insurance program under R.C. 9.833 or by contributing to a health and welfare trust fund administered through or in conjunction with a collective bargaining representative of the township employees. It does not appear that these methods of obtaining health coverage are relevant to your request and they are not addressed in this opinion.

The only reference in R.C. 505.60 to competitive bidding is in a provision authorizing a board of township trustees to provide health benefits "without competitive bidding, by contributing to a health and welfare trust fund administered through or in conjunction with a collective bargaining representative of the township employees." R.C. 505.60(A); *see* note 1, *supra*. The presence of the phrase "without competitive bidding" here, and its absence from the provision authorizing contracts with private companies, could be viewed as suggesting that such contracts with private companies are subject to a competitive bidding requirement. It does not, however, appear that such a requirement is imposed by statute. While various statutory provisions require a board of township trustees to follow competitive bidding procedures for different types of purchases, those provisions are not applicable to the purchase of hospital or medical insurance. *See, e.g.*, R.C. 511.12 (memorial building, monument, statue, or memorial); R.C. 515.01 and 515.07 (lighting or lighting improvements); R.C. 5549.21 and 5575.01 (machinery, materials, supplies, and labor for road construction or maintenance). Since no competitive bidding requirement is imposed by statute, it follows that a board of township trustees may purchase hospital or medical insurance from a private company without obtaining bids.

**A Township Trustee Is Not Permitted to Receive Health or Hospitalization Insurance Unless Purchase of the Insurance Was Authorized Prior to the Trustee's Existing Term of Office**

Your second question is whether a township may, during the term for which a particular trustee serves, authorize the purchase of health or hospitalization insurance for that trustee during that term, or whether it is necessary to have the purchase authorized by resolution before the term begins. This issue arises in light of Ohio Const. art. II, §20, which states: "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." The terms "salary" and "compensation" appearing in this provision have been found to be synonymous. *See State ex rel. Artmayer v. Board of Trustees*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975). It follows that Ohio Const. art. II, §20 prohibits any change in compensation during an officer's term.

A township trustee is an officer within the meaning of Ohio Const. art. II, §20, *see, e.g.*, 1981 Op. Att'y Gen. No. 81-099, and the provision of health or hospitalization insurance is a fringe benefit that constitutes part of the officer's compensation, *see State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976). Ohio Const. art. II, §20 thus prohibits a township from changing, during the term of a trustee, the compensation that the trustee receives. Accordingly, the township is not permitted, during an existing term of a township trustee, to authorize the purchase of health or hospitalization insurance for the trustee during that term. Rather, the purchase of health or hospitalization insurance must be authorized by resolution before a particular term begins.<sup>2</sup> *See, e.g., State ex rel. Parsons v. Ferguson*; 1980 Op. Att'y Gen. No. 80-002 (overruled, in part, on other grounds, by 1981 Op. Att'y Gen. No. 81-099 and 1983 Op. Att'y Gen. No. 83-036); *see also* 1992 Op. Att'y Gen. No. 92-031.

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<sup>2</sup> Existing statutory provisions permit a township that has authorized the purchase of health or hospitalization insurance to make certain changes in the coverage during an existing term, as follows:

An addition of a class or change of definition of coverage to the plan offered by the board may be made at any time that it is determined by the board to be in the best interest of the township. If the total cost to the township of the revised plan for

**Insurance Coverage May Be Provided for Trustees' Immediate Dependents**

Your third question is whether township trustees are empowered to purchase hospital or medical insurance for the spouse of a trustee or for other members of a trustee's family. R.C. 505.60(A) authorizes a board of township trustees to procure insurance policies, or to contract with health care corporations or health maintenance organizations, and requires that, if the board takes such action, the board "shall provide uniform coverage...for township officers and full-time township employees and their immediate dependents." This language appears on its face to encompass the immediate dependents of both full-time township employees and township officers, and it has been so construed. See 1990 Op. Att'y Gen. No. 90-064; see also 1984 Op. Att'y Gen. No. 84-086 (modified on other grounds by Op. No. 90-064). Indeed, it has been concluded that, if a board of township trustees procures health insurance benefits for its trustees, it is required to procure the same coverage for all other township officers, for all full-time employees of the township, and for the immediate dependents of all township officers and full-time employees. See, e.g., 1990 Op. Att'y Gen. No. 90-077; see also Op. No. 84-086.

Under R.C. 505.60(A), the board of township trustees may pay all or any part of the cost of health coverage procured pursuant to that provision, from the funds or budgets from which the officers or employees are compensated for services.<sup>3</sup> While the term "immediate dependents" is not defined by statute, the term, used in its ordinary sense, includes a trustee's spouse and other members of the trustee's immediate family. See, e.g., R.C. 1.42; *Webster's New World Dictionary* 378, 701 (2d college ed. 1978) (defining "dependent" as "a person who depends on someone else for existence, support, etc." and "immediate" as "directly or closely related [one's immediate family]"); cf. Op. No. 90-064 (language authorizing the board of township trustees to "pay all or any part of the cost of insurance policies" permits the board to determine not to pay the portion of the insurance premium attributable to the immediate dependents of an officer or employee).

Accordingly, if a board of township trustees procures hospital or medical coverage for a township trustee, it is required to procure the same coverage for the trustee's immediate dependents. The board has authority to pay the entire cost of coverage for the township trustee and the trustee's immediate dependents, or the board may choose to pay only part of the cost. See Op. No. 84-086.

**Payment for Insurance Obtained through Private Employment Is Not Permitted**

Your fourth question is whether, if a trustee pays for hospital coverage of himself and his family through a plan offered by his private employer, the township

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any trustee's coverage does not exceed that cost under the plan in effect during the prior policy year, the revision of the plan does not cause an increase in that trustee's compensation.

R.C. 505.60(A).

<sup>3</sup> If coverage is offered through contracts with health care corporations or health maintenance organizations, the township must give each officer or employee an annual choice of that coverage or a plan offered by an insurance company, medical care corporation, or dental care corporation. The officer or employee must pay any amount by which the cost of the plan chosen by him exceeds the cost of the plan offered by the board. R.C. 505.60(A).

trustees may pay for that insurance. R.C. 505.60 authorizes the provision of health coverage in various manners, as discussed above. R.C. 505.60 nowhere authorizes a board of township trustees to pay for health coverage offered to a township trustee by the trustee's private employer. There is, accordingly, no express statutory authority for the township trustees to provide the benefit in question. *See, e.g.*, 1990 Op. Att'y Gen. No. 90-053.

It has been generally concluded that the provisions of R.C. 505.60 restrict the authority of a board of township trustees with regard to the provision of health benefits. That is, since the General Assembly has expressly set forth the types of health coverage that a board of township trustees may provide and the methods that it may use, the board is not authorized to provide health benefits in any manner except as set forth in R.C. 505.60. *See, e.g.*, Op. No. 90-064, at 2-271 ("prior opinions have consistently concluded that R.C. 505.60 allows the board to provide insurance for its officers and employees only in the manner specified in the statute"); Op. No. 90-053; 1989 Op. Att'y Gen. No. 89-009.

Op. No. 90-053 considered a situation in which it was proposed that the board of township trustees pay a trustee the cost of maintaining health care insurance for her family through her private employer, since the township's insurance company refused coverage because of the permanent disability of a family member. That opinion concluded that a board of township trustees had no authority to provide such reimbursement. In the instant case, it must be concluded, similarly, that a board of township trustees has no authority to pay any portion of a health insurance contract entered into by a private employer. *See also* Op. No. 89-009; 1982 Op. Att'y Gen. No. 82-076.

#### **Uniformity of Coverage Is Mandatory; Uniformity of Premiums and Expenditures Is Not Mandatory**

Your fifth question is whether township trustees are permitted to spend different amounts for each trustee, or whether amounts of medical premiums must be the same. R.C. 505.60(A) provides that, if a board of township trustees chooses to procure health insurance policies or to contract for group insurance or health care services with health care corporations or health maintenance organizations, it must provide "uniform coverage under [the policies or contracts] for township officers and full-time township employees and their immediate dependents and may provide coverage...for part-time township employees and their immediate dependents."<sup>4</sup> The statute does not require that the premium charged or amount paid for each trustee be uniform; it requires, instead, that the coverage be uniform. *See, e.g.*, Op. No. 84-086; *see also* note 3, *supra*. If, in order to provide uniform coverage, the township must spend different amounts for different township trustees, that variation in expenditure is permitted under the statutory scheme. *See, e.g.*, Op. No. 90-053, at 2-223 ("it appears to be within the power of the board of township trustees to obtain separately the same health insurance benefits for the trustee who was denied coverage by the township's regular insurance carrier, so long as the coverage obtained is uniform with that provided other township officers and employees"). *See generally* 1989 Op. Att'y Gen. No. 89-003. As noted above, the board may choose to pay all or any part of the cost of health coverage. *See* R.C. 505.60(A); note 3, *supra*.

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<sup>4</sup> Because your questions are addressed to benefits for township trustees, this opinion considers only the provisions relating to township officers and full-time employees and does not discuss the provisions relating to part-time employees. Further, this opinion does not consider any effect that a collective bargaining agreement may have upon the provision of health care benefits by a township. *See generally* 1989 Op. Att'y Gen. No. 89-009, at 2-34 n. 1; note 1, *supra*.

**Maximum Expenditures Are Limited by Availability of Funds**

Your sixth question is whether there is a limit on the amount that township trustees may spend for hospital and medical coverage for themselves or their families. R.C. 505.60(A) authorizes township trustees to procure health coverage for township officers and employees and their immediate dependents by paying all or any part of the cost "from the funds or budgets from which the officers or employees are compensated for services." See note 3, *supra*. The statute provides no dollar limitation. A board of township trustees is, thus, permitted to expend for hospital and medical coverage for the trustees and their immediate dependents such amounts as it deems appropriate, provided that such amounts are available in the funds or budgets from which the trustees are compensated for services.

**Conclusion**

It is, therefore, my opinion, and you are advised as follows:

1. Since no competitive bidding requirement is imposed by statute, a board of township trustees may, pursuant to R.C. 505.60, purchase hospital or medical insurance from a private company without obtaining bids.
2. Ohio Const. art. II, §20 prohibits any change in the compensation of a township trustee during the trustee's existing term; accordingly, the purchase of health or hospitalization insurance for a township trustee must be authorized by resolution before the trustee's term begins.
3. If a board of township trustees procures hospital or medical coverage for a township trustee, the board must procure the same coverage for the trustee's immediate dependents; the board may pay all or any part of the cost of coverage for the township trustee and the trustee's immediate dependents.
4. 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.
5. R.C. 505.60(A) requires that, if a board of township trustees procures health benefits for any township officers or full-time employees, the coverage must be uniform for all township officers and full-time employees and their immediate dependents; there is no requirement that the premium charged or amount paid must be the same for each township trustee.
6. A board of township trustees may expend for health coverage of township officers and employees and their immediate dependents such amounts as it deems appropriate, provided that such amounts are available in the funds or budgets from which the township officers or employees are compensated for services.