

September 27, 2022

The Honorable Scott D. Phillips
Liberty Township Law Director
Frost Brown Todd LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069

SYLLABUS:

2022-013

A township that elects to offer reimbursement to its employees under R.C. 505.60(D) is not required to provide reimbursement to its township trustees.



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OPINION NO. 2022-013

The Honorable Scott D. Phillips
Liberty Township Law Director
Frost Brown Todd LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069

Dear Law Director Phillips:

You have requested an opinion on behalf of Liberty Township in Butler County regarding reimbursement under R.C. 505.60(D). I have framed your questions as follows:

1. If the township provides reimbursement for waiving health care coverage to its employees under R.C. 505.60(D), must it provide the same reimbursement to township trustees?
2. If the answer to question one is “yes,” and a township currently has a policy that provides a reimbursement option to township employees but not to township trustees, would a township trustee immediately qualify, as a matter of law, for reimbursement under R.C. 505.60(D)?

For the reasons that follow, I find that R.C. 505.60(D) does not require townships that offer reimbursement to their employees to offer the same reimbursement to township trustees. Because my answer to your first question is “no,” your second question is moot.

I

Your request is concerned with the language of R.C. 505.60(A) and (D). For background, you explain that Liberty Township offers insurance under R.C. 505.60(A). It passed a resolution that allows township employees the option to receive reimbursement under R.C. 505.60(D) if they are either denied insurance coverage or waive the offered insurance coverage. It does not make these reimbursements available to township trustees. Thus, Liberty Township does not provide uniform reimbursement to employees and trustees under R.C. 505.60(D).

Liberty Township is a limited-home-rule township. Your request, however, indicates that Liberty Township uses R.C. 505.60 without modification. Therefore, I analyze R.C. 505.60 as written by the legislature.

II

Your first question requires an examination of the relevant language of R.C. 505.60. R.C. 505.60(A) states:

As provided in this section and section 505.601 of the Revised Code, 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 section 124.841 of the Revised Code.

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.

R.C. 505.60(D) states:

If any township officer or employee is denied coverage under a health care plan

procured under 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 attributable to the coverage provided for the officer or employee and their immediate dependents for insurance benefits 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 any health care plan it procures under this section.

Your question primarily concerns the following language: "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." R.C. 505.60(A) (emphasis added). Your first question asks whether mandatory insurance uniformity under R.C. 505.60(A) requires mandatory reimbursement uniformity under R.C. 505.60(D).

R.C. 505.60(D) does not contain the word "uniform." Given that the legislature used the word "uniform" in R.C. 505.60(A) but not in R.C. 505.60(D), I must conclude that the omission of "uniform" in R.C. 505.60(D) was intentional. *See A.S. v. J.W.*, 157 Ohio St.3d 47, 2019-Ohio-2473, 131 N.E.3d 44, ¶¶ 14-15 (we must presume each word in a statute was intentional, and we must give effect to the statute as it is written); *see*

also Lynch v. Gallia Cty. Bd. of Commrs., 79 Ohio St.3d 251, 254, 680 N.E.2d 1222 (1997) (“a reviewing court must not construe a statute so as to supply words that are omitted”); *see also* 2012 Op. Att’y Gen. No. 2012-027, at 2-237. I also note that R.C. 505.60(B), which deals with contracts for group health care services, also contains the “uniform coverage” language that is lacking from R.C. 505.60(D). The inclusion of a uniformity mandate in both R.C. 505.60(A) and (B) further supports my conclusion that the legislature purposefully excluded such a mandate from R.C. 505.60(D).

A previous Attorney General opinion reached a similar conclusion. 2012 Op. Att’y Gen. No. 2012-027 analyzed a prior version of R.C. 505.60(D). The 2012 opinion found that, since the prior version of R.C. 505.60(D) lacked the phrase “and their immediate dependents,” a township lacked the authority to reimburse an officer or employee for health care coverage obtained for their immediate dependents, even though R.C. 505.60(A) included “and their immediate dependents.” 2012 Op. Att’y Gen. No. 2012-027, 2-236. The legislature subsequently amended R.C. 505.60(D) to add “and their immediate dependents,” but did not also add the uniform coverage language to R.C. 505.60(D). *See* Sub.H.B. No. 347, 129th Gen. A. (2012) (eff. Mar. 22, 2013); *see also* 2017 Op. Att’y Gen. No. 2017-007, Slip Op. at 4-5; 2-56 (stating that the legislature would have used different language if it wanted to allow a township employee or trustee the option of electing single coverage under a township health care plan and obtain reimbursement for their immediate dependents pursuant to the terms of R.C. 505.60(D)).

Here, in agreement with the logic used in 2012 Op. Att’y Gen. No. 2012-027, I find that no uniformity requirement is imposed on a township by R.C. 505.60(D). Had the legislature intended uniformity under R.C. 505.60(D), it could have easily indicated as much by using similar language to what is used in R.C. 505.60(A) and (B).

My conclusion that no uniformity is mandated by R.C. 505.60(D) is bolstered by comparing R.C. 505.60(D) to R.C. 505.601. Specifically, although R.C. 505.60 and R.C. 505.601 operate independently and mutually exclusively of one another, *see, e.g.*, 2017 Op. Att’y Gen. No. 2017-007, Slip Op. at 2, fn. 2; 2-53, fn. 2, both statutes pertain to the health care of township officers and employees. R.C. 505.601 states in part that, “[i]f 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” if three conditions are met. The second listed condition states: “That resolution provides for a uniform maximum monthly or yearly payment amount for each officer or employee to cover themselves and their immediate dependents, beyond which the township will not reimburse the officer or employee.” R.C. 505.601(B). The third listed condition states in part: “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.” *Id.* at (C).

The use of “uniform” in R.C. 505.601(B) and the phrase “all officers and employees of the township” in R.C.

505.601(C) shows that the legislature intended uniformity when applying R.C. 505.601. The different language used by the legislature when drafting R.C. 505.60(D) and R.C. 505.601 must therefore be given significance. *See* 2022 Op. Att’y Gen. No. 2022-009, Slip Op. at 5. And the intended result is that R.C. 505.601 requires uniformity and R.C. 505.60(D) does not.

Moreover, I do not view the use of the phrase “if the board procures any insurance policies under this section” in R.C. 505.60(A) to incorporate reimbursements under R.C. 505.60(D). Reimbursing an officer or employee for obtaining health insurance other than from the township is not “the board procuring an insurance policy.” Thus, such language has no bearing on the application of R.C. 505.60(D).

*

Finally, although not determinative to your question, I note that federal law imposes certain requirements on employers that offer health insurance. *See* 2018 Op. Att’y Gen. No. 2018-001; 2017 Op. Att’y Gen. No. 2017-026; 2015 Op. Att’y Gen. No. 2015-021 (syllabus 1 through 9 modified in part by 2017-026, and syllabus 10 explained by 2017-026). In certain circumstances, federal law may impose financial penalties on an employer if the employer offers non-uniform health care related benefits. *See* Auditor of State, *Ohio Township Handbook*, <https://perma.cc/9G3X-AG8W>, at A-51 (accessed Sept. 07, 2022). I encourage you to review these provisions and opinions and how they may relate to your particular township.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

A township that elects to offer reimbursement to its employees under R.C. 505.60(D) is not required to provide reimbursement to its township trustees.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D" and a long, sweeping tail on the "Y".

DAVE YOST
Ohio Attorney General