

January 26, 2024

The Honorable Chip McConville  
Knox County Prosecuting Attorney  
117 E. High St., Suite 234  
Mt. Vernon, OH 43050

SYLLABUS:

2024-002

A board of township trustees lacks authority to establish a death benefit payable directly from township funds to the family of a township employee who dies while so employed.



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OPINION NO. 2024-002

The Honorable Chip McConville  
Knox County Prosecuting Attorney  
117 E. High St., Suite 234  
Mt. Vernon, OH 43050

Dear Prosecutor McConville:

You have requested an opinion regarding a township's authority to provide a certain kind of death benefit for employees and officers. I have framed your questions as follows:

1. May a non-home rule township establish a death benefit payable directly from the township treasury to the family of a township employee if the employee dies during the employee's term of employment with the township?
2. If the answer to the preceding question is "yes," may a non-home rule township extend such a benefit to the trustees and fiscal officer?

For the reasons that follow, I find that a board of township trustees lacks authority to establish a death benefit payable directly from township funds to the family of a township employee who dies while so employed. Because the answer to question one is "no," question two is moot.

I

A

You have been asked by the trustees of a township in Knox County whether, instead of utilizing life insurance or other insurance to provide a death benefit for its employees, the board of township trustees may establish a death benefit that would pay a cash benefit to the family of the deceased employee directly from township funds.

The township is a non-home rule township. Based on additional information that you have supplied, the township is under the 5,000-population threshold at which the collective bargaining law applies, and therefore, it is ineligible to enter into a collective bargaining agreement. *See* R.C. 4117.01(A)-(C); R.C. 4117.03. Consequently, this opinion does not consider what effect a provision in a collective bargaining agreement might have on the answer to the question.

B

I note first that certain state statutes provide benefits as a matter of law in the event of the death of an employee, including township employees, in specific situations. “Every public employer ... shall contribute to the public insurance fund the amount of money determined by the administrator of workers’ compensation.” (Emphasis added.) R.C. 4123.38. Ohio’s worker’s compensation law provides that when “an injury to or an occupational disease contracted by an employee causes the employee’s death,” a death benefit is available to

the employee's dependents and is payable in the amount and manner provided by statute. R.C. 4123.59. *See generally* <https://info.bwc.ohio.gov/for-workers/benefits/types-of-benefits/death-claims-benefit>. (last accessed 01-03-2024).

Additionally, the Ohio Public Safety Officers Death Benefit Fund, legislatively established in R.C. 742.62-.63, provides benefits for certain survivors of designated public safety employees, including eligible township employees (e.g., township police officers and firefighters), who die in the line of duty or die "from injury sustained in the line of duty, including heart attack or other fatal injury or illness caused while in the line of duty." R.C. 742.63(A)(12)(a)-(b). However, this is not a benefit directly paid by the township.

## II

The question presented is narrow: may a non-home rule township establish a death benefit payable to the family of a township employee if the employee dies during the employee's term of employment with the township? You have clarified that the payment contemplated would be a lump sum made directly from the township treasury and not via an insurance plan.

In short, the answer is "no." The long-standing principle of law is that a board of trustees of a township, which is a creation of state statute, has only such authority as the state by statute confers upon it. *See In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St.3d 365, 369, 639 N.E.2d 42 (1994) (it is a "well-settled principle that township trustees can

exercise only those powers granted by the General Assembly”); 2008 Op. Att’y Gen. No. 2008-018, at 2-199. Nowhere in the township authorizing statutes in R.C. Chapter 505 is a township authorized to pay, directly from the township treasury, a death benefit.

A board of township trustees is, however, authorized by the Revised Code to provide a variety of specified benefits to its employees and officers. Those benefits are group life insurance, hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, sickness and accident insurance, long term care insurance, and benefits available to officers and employees through a cafeteria plan that meets the requirements of section 125 of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C.A. 125, as amended. *See generally*, R.C. 505.60-.603; R.C. 124.841; R.C. 9.833; 2017 Op. Att’y Gen. No. 2017-026; 2015 Op. Att’y Gen. No. 2015-021 (syllabus, paragraphs 1 through 9, modified in part, and followed in part, by 2017-026; syllabus, paragraph 10, explained by 2017-026).

Notably, as in R.C. Chapter 505, none of the statutory provisions listed above describes a benefit that is payable to a deceased employee’s family directly from township funds. Because the statute authorizes certain benefits but not others, the canon of statutory interpretation *expressio unius est exclusio alterius* (“the expression of one thing implies exclusion of another”) is applicable here. Because the statute’s list of expressly authorized benefits does not include a lump sum death benefit from the township treasury, its exclusion is implied. *See* 1979 Op. Att’y Gen. No. 79-025,

at 2-88; 1989 Op. Att’y Gen. No. 89-074 at 2-340; *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 524 N.E.2d 441 (1988), syllabus at paragraph three (“it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used”). Consequently, a board of township trustees will find no authority in these sections to utilize township funds as a method of providing a direct cash death benefit to a deceased employee’s family.

In addition, moneys held by a township are public funds and “may be expended only by clear authority of law and in accordance with applicable statutes.” 2007 Op. Att’y Gen. No. 2007-043, at 2-429; *see also* 2002 Op. Att’y Gen. No. 2002-031, at 2-206 (“With regard to the expenditure of public funds, it is generally established that public money is held in trust for the benefit of the public. Public money may be expended only by clear authority of law and in compliance with applicable statutory provisions”).

The only provisions that expressly allow the board of township trustees to directly pay an individual independent of insurance are in R.C. 505.60(D) and 505.601. *See generally* 2018 Op. Att’y Gen. No. 2018-001; 2022 Op. Att’y Gen. No. 2022-013. And even then, these statutes only permit employees and officers of boards of township trustees to be reimbursed for out-of-pocket premiums, under limited circumstances, and not for any other type of payment. If the General Assembly had intended to allow the township to pay a “death benefit” directly from the township treasury, it would have included language permitting such. *See, e.g.*, 2005 Op. Att’y Gen. No. 2005-019, at 2-182 (“If the

General Assembly had intended to include pre-sentence confinement costs, it likely would have used more explicit and descriptive language to clearly express that intent”). And “[s]hould the General Assembly wish to modify the existing statutory provisions, it could do so through appropriate legislation.” 1999 Op. Att’y Gen. No. 99-044, at 2-278.

### III

A somewhat more detailed review of benefits that townships are expressly authorized to provide to their employees and officers is helpful for confirming that benefits may not take the form of a direct cash payment from township treasury upon an employee’s or officer’s death.

A previous opinion noted that “[a]n examination of R.C. 505.60, in its entirety, and related statutory provisions evidences a clear intent by the General Assembly to grant townships a broad, flexible range of options under which to provide health care coverage for their officers and employees.” 2001 Op. Att’y Gen. No. 2001-025, at 2-141. Inherent in flexibility is variability, and an ultimate determination about coverage for a particular township is a question of fact that an opinion of the Attorney General cannot answer. *E.g.*, 2014 Op. Att’y Gen. No. 2014-007, Slip Op. at 15; 2-66.

I note further that “[a]n insurance policy is a contract,” and any interpretation of contract terms is also beyond the scope of an Attorney General opinion. *Sharonville v. Am. Emps. Ins. Co.*, 109 Ohio St.3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶6; 2005 Op. Att’y Gen. No.

2005-033, at 2-347 (“We are not able, through the exercise of the opinions function, to make findings of fact or to determine the validity or effect of particular contracts or resolutions. Those matters must be determined in a particular case by the persons involved, or by the courts”).

#### A

“Life insurance” is “[a]n agreement between an insurance company and the policyholder to pay a specified amount to a designated beneficiary on the insured’s death.” *Black’s Law Dictionary*, 1111 (11<sup>th</sup> Ed.2019).

“Group life insurance” is one of the benefits that a board of township trustees is expressly authorized to provide. *See* R.C. 3917.01(A) (defining “group life insurance”). R.C. 505.602 states that a township may “procure and pay all or any part of the cost of group life insurance to insure the lives of officers and employees of the township” but with the limitation that coverage per officer “shall not exceed fifty thousand dollars.” R.C. 505.602; *see also* R.C. 505.60(B).

In the township setting, when the board of township trustees provides its employees and officers with group life insurance, the township, as the employer, is the policyholder, but the benefits are payable to the designated beneficiary of the employee or officer upon the death of such employee or officer. *See* R.C. 3917.01(A). A statutory limitation that accompanies this authorization to provide group life insurance is that the coverage is to be provided through the purchase of insurance. R.C. 505.602. Importantly, this requirement



negates any authority to provide a direct cash death benefit from the township treasury. *See* 1998 Op. Att’y Gen. No. 98-019, at 2-100 (“R.C. 505.60 allows the board to provide insurance for its officers and employees only in the manner specified in the statute; further, any arrangements incidental thereto are similarly restricted by the terms of the statute”).

## B

A sickness and accident insurance benefit may also be provided by the township to its officers and employees. Although it is not life insurance, sickness and accident insurance may also contain a death benefit. 1969 Op. Att’y Gen. No. 69-046, at 2-99 (“The inclusion of an accidental death benefit in a sickness and accident policy does not make the policy one of life insurance.”) (Opinion modified in other respects by legislative amendments, including 1970 Am.Sub.S.B. No. 522, 133 Ohio Laws, 1447, 1448-1449, effective Sept. 14, 1970, (eliminating requirement that all health insurance be group insurance) and 1999 Am.Sub.H.B. No. 187, 148 Ohio Laws, Part I, 1213, 1239, effective Sept. 20, 1999 (authorizing purchase of group life insurance by board of township trustees under R.C. 505.602)); R.C. 3923.01 (defining sickness and accident insurance); *see also* R.C. 3923.12(A) (group sickness and accident insurance “is that form of sickness and accident insurance covering any group of two or more employees, members, or other persons, with or without one or more of their dependents and members of their immediate families”).

Sickness and accident insurance is more limited than life insurance in providing a benefit on the death of the insured because, generally, the cause of death must be accidental. R.C. 3923.011(C) (“Accidental death” means death by accident exclusively and independently of all other causes” unless otherwise provided in the policy, a rider, or indorsement).

The cost of the benefits described above, if offered to the employees and officers of the township, is to be paid “from the funds or budgets from which the officers or employees are compensated for services.” R.C. 505.60(A). If the board of township trustees provides any or all of these insurance coverages that the statute authorizes, it must provide the same coverage on a uniform basis for “township officers and full-time township employees and their immediate dependents.” R.C. 505.60(A).

However, the authorization to provide benefits in this statutory division is expressly limited to the purchase “of insurance policies,” and the statute further stipulates that the insurance policies providing the benefits must “be issued by an insurance company duly authorized to do business in this state.” *Id.* When a statute authorizing expenditures also contains limitations on that authority, the limitations may not be disregarded. *E.g.*, 2002 Op. Att’y Gen. No. 2002-031, at 2-206.

Under this division, it is clear that a board of township trustees has no authority to substitute a direct cash death payment in lieu of purchasing sickness and accident insurance.

## C

## i

In addition to authorizing the board of township trustees to provide the specified benefits, the relevant statutes also authorize multiple methods by which a township may procure and pay for those benefits. Subject to the limitations and requirements found in each statute, coverage for the benefits listed in R.C. 505.60(A) may also be provided through “a contract for group health care services with health insuring corporations holding certificates of authority under Chapter 1751. of the Revised Code,” R.C. 505.60(B); through an “individual self-insurance or joint self-insurance program as provided in section 9.833 of the Revised Code,” R.C. 505.60(E); or through premium reimbursement arrangements to the extent permitted in R.C. 505.601 and 505.60(D).

R.C. 505.60 also limits the benefits that may be provided by these methods to those specifically set out in R.C. 505.60(A): “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.” Since the type of death benefit about which you inquire—a lump sum paid directly from the township treasury—is neither listed in this statute nor reasonably implicated by its plain language, the township derives no additional relevant authority from this section that would modify the answer to question one.

You have not indicated that the township in question is self-insured. But, in my review of the statutes for available benefits that townships are authorized to provide, I will address this briefly.

R.C. 505.60(E) grants boards of township trustees the authority to provide benefits to its officers and employees “through an individual self-insurance program or joint self-insurance program as provided in section 9.833 of the Revised Code.” R.C. 9.833(B)(1) states that public moneys may be used to provide “authorized health care benefits, including but not limited to, health care, prescription drugs, dental care, and vision care.” Although “self-insurance is not insurance,” it “has a structure that is ‘analogous to insurance.’” *Physicians Ins. Co. v. Grandview Hosp. & Med. Ctr.*, 44 Ohio App.3d 157, 158, 542 N.E.2d 706 (2d Dist.1988); 2001 Op. Att’y Gen. No. 2001-043, at 2-272, quoting *Ohio Govt. Risk Mgt. Plan v. Cty. Risk Sharing Auth.*, 130 Ohio App.3d 174, 180, 719 N.E.2d 992 (6th Dist.1998). As such, any benefit provided through self-insurance would still be through a program plan and not directly from the township treasury.

The question here, then, is: does R.C. 9.833 provide the additional authority necessary to provide for a ‘cash on death’ payment from township funds to the family of a person who dies while employed by the township? Or, asked differently: does the self-insurance statute expand the list of authorized benefits that township trustee boards may provide? As this question relates to the expenditure of public funds, and because self-

insurance programs must comply with Ohio Auditor of State standards, specific questions about self-insurance would be best addressed by that office. *See generally* 2001 Op. Att’y Gen. No. 2001-025; Auditor of State Bulletin 2001-005 ([https://ohioauditor.gov/publications/bulletins/2001/2001-005\\_rev.pdf](https://ohioauditor.gov/publications/bulletins/2001/2001-005_rev.pdf)) (describing requirements for self-insured political subdivisions, including governmental insurance pools); *see also* Auditor of State Bulletin 2011-008 (<https://ohioauditor.gov/publications/bulletins/2011/2011-008.pdf>) (modified by 131 Am.Sub.S.B. 3, as reflected in Auditor of State Bulletin 2017-002 (<https://ohioauditor.gov/publications/bulletins/2017/2017-002.pdf>)).

The words used in R.C. 505.60(E), “the benefits described in this section,” are words of limitation and, as such, R.C. 9.833 does not give townships additional authority to provide benefits through self-insurance that are not already authorized in R.C. 505.60(A).

iii

A final consideration is whether the authorization under R.C. 505.603 for a board of township trustees to use a cafeteria plan to provide employees and officers benefits “in addition or in lieu of providing benefits” under Revised Code sections 505.60, 505.601, or 505.602 impacts the answer to question one.

If the board chooses to utilize a cafeteria plan, it must be one that “meets the requirements of section 125 of the ‘Internal Revenue Code of 1986,’ 100 Stat. 2085, 26 U.S.C.A. 125, as amended,” and conform to its

definitions, exclusions, and eligibility standards. R.C. 505.603(A).

Under a cafeteria plan, a “cash payment in lieu of a benefit” may be available. R.C. 505.603(A). However, this is only so if the township has adopted a policy allowing for the use of a cafeteria plan and the township “officer or employee signs a statement affirming that the officer or employee is covered under another health insurance or health care policy, contract, or plan in the case of a health benefit, or a life insurance policy in the case of a life insurance benefit, and setting forth the name of the employer, if any, that sponsors the coverage, the name of the carrier that provides the coverage, and an identifying number of the applicable policy, contract, or plan.” R.C. 505.603(A).

In the absence of a policy allowing for the use of a cafeteria plan, or if the officer or employee does not complete the required statement, this would not apply to the question under review here. And, you have not indicated that such a policy has been adopted or contemplated by the township in question, so analyzing the cafeteria plan does not change the answer to question one.

These provisions governing cafeteria plans are complex, and failure to fully comply with each would likely result in loss of the exemption of the value of benefits from the employee’s federal income tax liability—one of a cafeteria plan’s key attributes. An Attorney General opinion cannot delve into every aspect of the law to find a means by which a desired outcome is achieved. *See* 2021 Op. Att’y Gen. No. 2021-006, Slip Op. at 10;

2-29. Moreover, this matter necessarily requires an analysis of federal law which the Internal Revenue Service has authority to administer, and the matter is subject to its determination. Therefore, I am unable to provide an authoritative opinion based on state law. *See* 1999 Op. Att'y Gen. No. 99-007, at 2-55 (the Attorney General is not empowered to provide authoritative interpretations of federal law); *see also* 2001 Op. Att'y Gen. No. 2001-032, at 2-193 (“[t]he Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials, nor do we find it appropriate to advise one public body on matters concerning the powers and duties of another public body”).

#### Conclusion

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

A board of township trustees lacks authority to establish a death benefit payable directly from township funds to the family of a township employee who dies while so employed.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST  
Ohio Attorney General