

March 13, 2017

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
6th Floor Administration Building
21 West Boardman Street
Youngstown, Ohio 44503

SYLLABUS:

2017-007

R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care coverage otherwise obtained for the officer or employee's immediate dependents when the officer or employee elects to participate in the township's health care plan, but elects not to participate in the township's health care plan for his immediate dependents.



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OPINION NO. 2017-007

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
6th Floor Administration Building
21 West Boardman Street
Youngstown, Ohio 44503

Dear Prosecutor Gains:

You have requested an opinion whether R.C. 505.60(D) permits a township to reimburse a township officer or employee for out-of-pocket premiums attributable to health care coverage for his immediate dependents when the township officer or employee elects single coverage participation in the township's health care plan and does not elect coverage for his immediate dependents.¹ You specifically ask the following questions:

1. Does the plain and ordinary meaning of the language, "elects not to participate," in R.C. 505.60(D) include the ability of the township officer or employee to elect any of the offered levels of participation which may include the township officer or employee, yet excludes one or more of the township officer or employee's dependents?
2. Must R.C. 505.60(D) be read to comport with its clearly intended purpose to increase the options available to township officers and employees to obtain health

¹ When providing health care insurance plans to officers and employees, a township may present different categories of coverage options to the officer or employee. These options may include single or family coverage, but these options may not be the only options offered within a township's health care insurance plan. The terms "single coverage" and "family coverage" are not defined by statute. For purposes of this opinion, we understand election of "single coverage" to mean that the township officer or employee has elected health care insurance coverage for himself as an individual, and "the election of family coverage" to mean that the officer or employee has elected health care insurance coverage for himself and his immediate dependents. "While the term immediate dependents is not defined by statute, the term, used in its ordinary sense, includes [an officer or employee's] spouse and other members of the [officer or employee's] immediate family." 1992 Op. Att'y Gen. No. 92-068, at 2-282 (modified, in part, on other grounds by 2005 Op. Att'y Gen. No. 2005-038). Accordingly, the election of family coverage may include the officer or employee's spouse, his children, or both his spouse and children.

care coverage in the most cost effective manner to both the townships and township officers and employees?

3. Does R.C. 505.60(D) expressly permit the reimbursement for immediate dependents of township officers or employees who elect single coverage participation in the township's health care plan, but who do not elect coverage for their dependents? Alternatively, is R.C. 505.60(D) limited to permit reimbursement of out-of-pocket premiums for the immediate dependents of township officers or employees only when the township officer or employee declines to participate in the township's health plan?

Insofar as these questions inquire as to the same issue, we have addressed your queries together.

A board of township trustees is a creature of statute and, therefore, possesses only those powers vested in it, either expressly or impliedly, by the General Assembly. *In re Petition of Incorporation of Vill. of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994); 2008 Op. Att'y Gen. No. 2008-018, at 2-199. Thus, whether a township officer or employee may be reimbursed by a board of township trustees for out-of-pocket premiums attributable to health care insurance coverage otherwise obtained by an officer or employee for his immediate dependents depends upon whether the General Assembly has expressly or impliedly authorized the board of township trustees to make such a reimbursement. *See* 1990 Op. Att'y Gen. No. 90-064, at 2-271 ("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"); *see also State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916) ("[t]he authority to act in financial transactions must be clear and distinctly granted" and any doubt concerning the authority to expend public funds must be resolved against the expenditure). Division (A) of R.C. 505.60 authorizes a board of township trustees to provide health insurance coverage to its officers and employees and their immediate dependents:

As provided in this section and [R.C. 505.601²], 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....

² R.C. 505.60 operates independently of R.C. 505.601 and the statutes are mutually exclusive. 2005 Op. Att'y Gen. No. 2005-038, at 2-400 n.3. The township that is the subject of your inquiry offers health care insurance coverage to its officers and employees under R.C. 505.60(A). Accordingly, we limit our analysis to R.C. 505.60.

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 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. (Footnote added).

Division (D) of R.C. 505.60 authorizes the township to reimburse a township officer or employee for out-of-pocket premiums attributable to health care coverage for immediate dependents under certain conditions. R.C. 505.60(D) provides that:

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 [R.C. 505.60(A)] 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.

The plain language of R.C. 505.60(D) specifies two alternative conditions precedent for a township officer or employee to receive a reimbursement of out-of-pocket premiums attributable to health care coverage for the officer or employee's immediate dependents that the officer or employee otherwise obtains. The first condition is that the officer or employee is denied health care coverage under a health care plan procured under R.C. 505.60. The second condition is the officer or employee elects not to participate in the township's health care plan. The second alternative condition is relevant to answering your questions.

Whether a township may reimburse a township officer or employee for out-of-pocket premiums attributable to health care coverage that the officer or employee otherwise obtains for his immediate dependents depends, in part, upon the meaning of the phrase, "elects not to participate," in R.C. 505.60(D). The terms within this phrase are not defined by statute. Words and phrases not defined by statute "shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. "To participate" means "to take part," or "to have a part or share in something." *Merriam-Webster's Collegiate Dictionary* 903 (11th ed. 2005). "Participation" is the "the act of participating," or "the state of being related to a larger whole." *Id.* The term, "not" as used in this phrase, is an adverb that serves as "a function word to make negative a group of words or a word." *Id.* at 848. Hence, the use of "not" before "to participate" when referring to the election of a health care plan offered by a township indicates that an election does not happen and no participation of any kind occurs. Accordingly, when a township officer or employee "elects not to participate" in a health care plan offered by a township, he elects not to participate in any part of a health care plan offered by the township.

R.C. 505.60(D) states plainly and unambiguously that an officer or employee that “elects not to participate” in the township’s health care plan may be reimbursed. The language of the statute does not state that an officer or employee that elects single coverage under the township’s health care plan rather than family coverage may be reimbursed for out-of-pocket premiums attributable to coverage otherwise obtained for his immediate dependents. The statute also does not state that the election of single coverage by an officer or employee of the township constitutes electing not to participate for the purpose of being eligible for such reimbursement.

There is a clear difference between the meaning of a “health care plan” provided by a township and “health care coverage” options provided within a township’s health care plan. The General Assembly uses the term “coverage” in R.C. 505.60(A) (“the board shall provide uniform *coverage*”; “may provide *coverage* under these policies for part-time township employees and their immediate dependents”) (emphasis added); R.C. 505.60(B) (“[t]he board may also provide *coverage* for any or all of the benefits described in [R.C. 505.60(A)]”) (emphasis added); and R.C. 505.60(C) (“[a]ny township officer or employee may refuse to accept any *coverage* authorized by this section without affecting the availability of such *coverage* to other township officers and employees”) (emphasis added). The General Assembly uses the term “plan” in R.C. 505.60(B)(1) (“[c]hoose between a *plan* offered by an insurance company and a *plan* offered by a health insuring corporation, and provided further that the officer or employee pays any amount by which the cost of the *plan* chosen exceeds the cost of the *plan* offered by the board”) (emphasis added). The General Assembly uses both terms in R.C. 505.60(B)(2) (“[a]n addition of a class or change of definition of *coverage* to the *plan* offered under this division 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”) (emphasis added); R.C. 505.60(D) (“[i]f 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 [R.C. 505.60(A)] that the officer or employee otherwise obtains”) (emphasis added); and R.C. 505.60(F) (“[i]f a board of township trustees fails to pay one or more premiums for a policy, contract, or *plan* of insurance or health care services authorized under this section and the failure causes a lapse, cancellation, or other termination of *coverage* under the policy, contract, or *plan*, it may reimburse a township officer or employee for, or pay on behalf of the officer or employee, any expenses incurred that would have been covered under the policy, contract, or *plan*”) (emphasis added).

The use of the two different terms reinforces the principle that the General Assembly was cognizant of the separate meaning of each word, and the choice of language was deliberate. See *Inglis v. Pontius*, 102 Ohio St. 140, 149, 131 N.E. 509 (1921) (“[i]t will be presumed that the general assembly had some purpose in mind in using both words instead of only one, and unless the words are inconsistent or contradictory it is the duty of the courts to give effect to both words”). A township health care plan will typically include multiple coverage options for an officer or employee. When an officer or employee selects among the different coverage options, whether a single coverage election or a family coverage election, he thereby participates in the township’s health care plan under R.C. 505.60(D). Instead of stating “elects not to participate in the township’s health care plan,” the General

Assembly could have stated that the officer or employee “elects not to obtain coverage for his immediate dependents” in order to receive reimbursement for out-of-pocket premiums attributable to health care coverage otherwise obtained by the officer or employee for his immediate dependents. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the General Assembly intended a term to have a particular meaning, “it would not have been difficult to find language which would express that purpose”). A board of township trustees is not authorized to make such a distinction that is not expressly delineated in the statute. Therefore, R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care coverage otherwise obtained for the officer or employee’s immediate dependents when the officer or employee elects to participate in the township’s health care plan, but elects not to participate in the township’s health care plan for his immediate dependents.

You suggest that the statutory analysis in 2005 Op. Att’y Gen. No. 2005-038 and the General Assembly’s response to the conclusion in 2012 Op. Att’y Gen. No. 2012-027 permit us to read “elects not to participate” in R.C. 505.60(D) to mean that if an officer or employee elects for his immediate dependents not to participate in the township’s health care plan, the out-of-pocket premiums attributable to coverage he otherwise obtains for his dependents remain reimbursable, even though he elects coverage for himself under the township’s health care plan. 2005 Op. Att’y Gen. No. 2005-038 addressed the authority of a township to reimburse a township officer or employee for health care coverage he otherwise obtained through the health care plan of his spouse’s employer. When 2005 Op. Att’y Gen. No. 2005-038 was issued, R.C. 505.60(C), now R.C. 505.60(D), authorized a township to “reimburse the officer or employee for 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.” (Emphasis added.)³ The Attorney General recognized that the meaning of “incurs” ordinarily is associated with liability for the costs for health care premiums required by a

³ In 2008 the General Assembly enacted Sub. H.B. 458, 127th Gen. A. (2008) (eff. Dec. 30, 2008), for the purpose of amending the language of R.C. 505.60 and reordering its provisions. Prior to the enactment of Sub. H.B. 458, the language of R.C. 505.60(C) declared, in part, that,

[i]f any township officer or employee is denied coverage under a health care plan ... 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 [R.C. 505.60 (A)] that the officer or employee otherwise obtains[.]

Sub. H.B. 458 reordered the provisions of R.C. 505.60 by moving the language of then division (C) to a new division (D). Further, Sub. H.B. 458 amended the language of new division (D) to state, in pertinent part, that “the township may reimburse the officer or employee for each out-of-pocket premium attributable to the coverage provided for the officer or employee for insurance benefits described in [R.C. 505.60 (A)] that the officer or employee otherwise obtains[.]” The bill removed the term “incurs” from new division (D).

spouse's employer-provided health plan. A literal reading of the phrase "that the officer or employee incurs" was rejected by the Attorney General because the officer or employee would never be the individual incurring the liability when his spouse's employer provided the health coverage that he obtained. Rather, only his spouse would be liable to the employer. As noted in your request, the opinion reasoned that

[b]y 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.

2005 Op. Att'y Gen. No. 2005-038, at 2-401. "[I]f possible, statutes must be construed so that some operative effect is given to every word written in them. However, if a literal construction of the wording of a statute leads to gross absurdity, manifestly contradictory to common reasoning, the court may interpret the statute so as to arrive at a logical conclusion." *State v. Gordon*, 161 Ohio Misc. 2d 1, 3, 940 N.E.2d 1042 (C.P. Lake County 2010). The ambiguity of "incurs" concerned the out-of-pocket premiums attributable to the health care coverage otherwise obtained by the township officer or employee. These premiums were indirectly incurred as an expense of the family, but failed to qualify for reimbursement because the spouse's employer-provided health care premiums were not directly incurred by the township officer or employer. A plain language reading of "incurs" would have thwarted the General Assembly's intent to provide flexibility in the options available and be cost-effective to the township and its personnel in its provision of a health care plan. The application of a literal meaning of the word "incurs" would not have permitted a township officer or employee to be reimbursed for a spouse's out-of-pocket premiums attributable to the spouse's employer-provided health care plan as the township officer or employee did not personally, or directly, incur the out-of-pocket premiums. This would be an unreasonable result and contrary to the intent of the General Assembly, as the officer or employer would be foreclosed from the option to participate in a health care plan provided by his spouse's employer.

R.C. 505.60(D) identifies two alternative conditions precedent that determine whether a township officer or employee may be reimbursed for out-of-pocket premiums attributable to health care coverage of an officer or employee's immediate dependents: the township's health care plan denies coverage to the officer or employee, or the officer or employee elects not to participate in the township's health care plan. Either of the two conditions precedent must be present before an officer or employee may be reimbursed for out-of-pocket premiums attributable to health care coverage he otherwise obtains for his immediate dependents. The election of single coverage under a township health care plan by a township officer or employee forecloses his eligibility for reimbursement of premiums attributable to health care coverage he otherwise obtains for his immediate dependents. Thus, the plain language renders a result feasible of implementation. *See* R.C. 1.47 (B), (D) (in enacting statutes, it is presumed that the legislature means for the entire statute to be effective and that a result capable of execution is intended). Because a feasible result may be executed within the plain language of the statute, no ambiguity exists. Accordingly, an analysis relying on the intent of the

General Assembly is unnecessary. *See In re Kyle*, 510 B.R. 804, 811 (Bankr. S.D. Ohio 2014) (“[i]f the statutory language is clear, the inquiry ends and the court must apply the plain language”).

You explain that in the present circumstance the spouses of two officers of a township are each eligible for insurance coverage under Medicare. In each instance, the cost to the township of providing reimbursement to the officer for the Medicare premiums for the spouse as an immediate dependent is less than the cost of providing family health care coverage under the township health care plan that includes the township officer’s spouse. To disallow a reimbursement in this situation when the officer elects single coverage would in effect incentivize the officer to elect family coverage, thereby increasing the total cost incurred by the township. While the overall cost of health care coverage that includes coverage of a township officer or employee’s immediate dependents may be higher than single coverage for the township officer or employee, the township may limit the amount that the township is willing to pay for each township officer or employee. *See* R.C. 505.60(A) (“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” (emphasis added)); 1990 Op. Att’y Gen. No. 90-064, at 2-272 (if the board does procure uniform health insurance coverage to all officers and employees and their immediate dependents, the board is not required to pay the entire costs of providing uniform health insurance coverage, but may limit payment on behalf of each officer or employees to a fixed amount); *see also* 2004 Op. Att’y Gen. No. 2004-004, at 2-37 (“[i]t appears to be common practice for public employers that provide their employees health care coverage to charge such employees one sum for individual coverage and a greater sum for family coverage, because, as a general rule, the cost of obtaining family coverage exceeds the cost of single coverage”).

In 2012 Op. Att’y Gen. No. 2012-027, the Attorney General addressed the eligibility of a township officer or employee to be reimbursed for out-of-pocket premiums attributable to health care coverage that he otherwise obtained for his immediate dependents. A plain language analysis was utilized that focused on the absence of the phrase “and their immediate dependents.” The opinion recognized that this phrase, “and their immediate dependents” was not included in R.C. 505.60(D). The phrase, “and their immediate dependents,” however, had been included in R.C. 505.60(A), R.C. 505.60(B), and R.C. 505.601. The Attorney General reiterated that prior opinions consistently concluded that R.C. 505.60 allowed a board of township trustees to provide insurance for its officers and employees only in the manner specified in the statute. 2012 Op. Att’y Gen. No. 2012-027, at 2-236; *see, e.g.*, 1990 Op. Att’y Gen. No. 90-064 (syllabus) (“[p]ursuant to R.C. 505.60(A), the board of township trustees may procure health insurance benefits which offer uniform coverage to township officers and full-time employees and their immediate dependents, while paying only that portion of the insurance premium attributable to the officer or employee”); 1989 Op. Att’y Gen. No. 89-009, at 2-35 (overruled, in part, on other grounds by 2008 Op. Att’y Gen. No. 2008-018) (“[t]he conspicuous absence of such a statement [that township trustees may make payments to township officers and employees as reimbursement for deductible payments] in R.C. 505.60(A) suggests that such authority on the part of a board of township trustees may not be implied”).

2012 Op. Att’y Gen. No. 2012-027 concluded that no language in R.C. 505.60(D) expressly authorized reimbursement for out-of-pocket premiums attributable to the coverage otherwise obtained for an officer or employee’s immediate dependents. Thus, in the absence of the phrase “and their immediate dependents,” a township officer or employee was not to be reimbursed for out-of-pocket health care premiums for coverage otherwise obtained for the officer or employee’s immediate dependents. Following the issuance of 2012 Op. Att’y Gen. No. 2012-027, the General Assembly amended R.C. 505.60(D) to insert the language “and their immediate dependents” so that out-of-pocket premiums attributable to health care coverage for the officer or employee’s immediate dependents could be reimbursed under certain conditions. *See* Sub. H.B. 347, 129th Gen. A. (2012) (eff. Mar. 22, 2013). While we agree that the 2012 amendment of R.C. 505.60(D) was intended to allow reimbursement for an officer or employee out-of-pocket premiums for health care coverage otherwise obtained for his immediate dependents, we do not agree that the amendment evidences an intent that the reimbursement occur when the officer or employee elects to participate for himself, but not for his immediate dependents. Again, the plain language of R.C. 505.60(D) is “elects not to participate in the health care plan.”

The facts and circumstances of your inquiry revolve around the specific language of R.C. 505.60(D), rather than the absence of a specific word or phrase. When alternative express conditions precedent are stated in plain language, as is the case with R.C. 505.60(D), we are constrained to apply that plain language. If a different result is desired, the remedy may be attained by seeking an amendment of the statute by the General Assembly. *Cf. State ex rel. Nimberger v. Bushnell*, 95 Ohio St. 203, 116 N.E. 464 (1917) (syllabus, paragraph four) (“[w]hen the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment”).

Conclusion

On the basis of the foregoing, it is my opinion, and you are hereby advised that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care coverage otherwise obtained for the officer or employee’s immediate dependents when the officer or employee elects to participate in the township’s health care plan, but elects not to participate in the township’s health care plan for his immediate dependents.

Very respectfully yours,

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

MICHAEL DEWINE
Ohio Attorney General