

OPINION NO. 79-064**Syllabus:**

A county board of mental retardation, which has the power to fix the compensation of its employees, may procure group health insurance for such employees. (1969 Op. Att'y Gen. No. 69-049 clarified and limited.)

To: R. Larry Schneider, Union County Pros. Atty., Marysville, Ohio
By: William J. Brown, Attorney General, September 27, 1979

I have before me your request for my opinion in which you ask the following question:

Does a county board of mental retardation (169 board) have the right to purchase group health insurance for its employees (not employees of contract agencies) where the board of county commissioners has not authorized the purchase of group health insurance for county employees under R.C. 305.171?

You state in your letter that the Union County Board of Mental Retardation has purchased group health insurance for its employees in reliance upon the opinion of a former prosecutor. That opinion was premised on 1977 Op. Att'y Gen. No. 77-048, wherein I stated that group insurance can be included in a fringe benefit package for employees of contract agencies by a community mental health and retardation board (648 board). You further note that, under 1969 Op. Att'y Gen. No. 69-049, it would appear that a county board of mental retardation does not have the authority to purchase such insurance for its employees.

R.C. 305.171 empowers only the board of county commissioners to purchase group hospitalization insurance for county officers and employees. 1970 Op. Att'y Gen. No. 70-051. As such, my predecessor in 1969 Op. Att'y Gen. No. 69-049 held that county commissioners may not authorize a county board of mental retardation to enter into a group insurance contract on behalf of its employees pursuant to R.C. 305.171. Insofar as this opinion is limited to the power of any person or agency, other than the board of county commissioners, to purchase group health insurance under R.C. 305.171, it is still valid. The opinion did not, however, inquire into any other possible basis for the purchase of hospitalization, and therefore, the resolution of your question does not end here.

It is a general rule that public officers cannot provide fringe benefits for their employees absent express statutory authorization therefor. See 1977 Op. Att'y Gen. No. 77-090. It is, however, also established that the authority of a public officer or board to fix the compensation of its employees includes the power to pay the costs of health insurance. See, e.g., 1977 Op. Att'y Gen. No. 77-066; 1976 Op. Att'y Gen. No. 76-078; 1975 Op. Att'y Gen. No. 75-084; 1975 Op. Att'y Gen. No. 75-014; 1961 Op. Att'y Gen. No. 2171, p. 218. In light of State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389 (1976), wherein it was stated that fringe benefits are as much a part of compensation as a weekly paycheck, a county officer with the authority to fix the compensation of employees must also be accorded the right to authorize the payment of health insurance premiums for such employees. 1978 Op. Att'y Gen. No. 78-029.

My opinion in 1977 Op. Att'y Gen. No. 77-048 was premised upon the foregoing principles. Because R.C. 340.03 (D), (E) and (H) grant a community mental health and retardation board the power to approve salary schedules for employees and consultants and to set specific contractual terms, I concluded in Op. No. 77-048, supra, that the board could include health insurance benefits in contracts with agencies pursuant to R.C. 340.03(E). Thus, it is necessary to determine whether a county board of mental retardation is empowered to set the compensation and salary of its employees.

R.C. 5126.03 sets out the powers and duties of a county board of mental retardation, which include the power to:

- (C) Employ such personnel and provide such services, facilities, transportation, and equipment as are necessary;
- (D) Provide such funds as are necessary for the operation of facilities, programs, and services established under section 5126.06 of the Revised Code.

Moreover, R.C. 5126.04 provides that the board must appoint an administrator who shall, with the board's approval, "appoint all other employees necessary to fulfill the duties invested in such board." The county commissioners are required to make appropriations sufficient to enable the board of mental retardation to perform its statutory functions and duties. R.C. 5126.03. Therefore, although a board of county commissioners serves as the taxing authority for the county board of mental retardation, it exercises no supervisory powers over the programs, facilities, and general operation of the mental retardation board. 1978 Op. Att'y Gen. No. 78-027.

R.C. Chapter 5126 does not specifically authorize a county board of mental retardation to fix the salaries of employees. However, in a situation in which the board of county commissioners has no voice in the hiring of a board or agency's employees except as to approval of the aggregate amount allowed for personal services, the subordinate board is empowered to fix the compensation of its individual employees, as a power implied in the power to appoint them. 1958 Op. Att'y Gen. No. 1744, p. 98. Accordingly, a county board of mental retardation, pursuant to R.C. Chapter 5126, is the proper authority to set salary schedules for its employees. 1974 Op. Att'y Gen. No. 74-017. As such, a county board of mental retardation may, as part of the compensation of its employees, procure health insurance for their benefit, and the county commissioners must pay such premiums from any fund or budget from which the employees are compensated. See 1978 Op. Att'y Gen. No. 78-029.

Accordingly, it is my opinion, and you are advised, that a county board of mental retardation, which has the power to fix the compensation of its employees, may procure group health insurance for such employees. (1969 Op. Att'y Gen. No. 69-049 clarified and limited.)