

**OPINION NO. 82-038****Syllabus:**

A board of county commissioners may not renew a contract for group medical insurance, without competitive bidding in accordance with R.C. 307.86, either when that contract lacks an express term for renewal at a predetermined cost, or when significant changes in proposed premium rates, coverage, and benefits have occurred.

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**To: Vincent E. Gilmartin, Mahoning County Prosecuting Attorney, Youngstown, Ohio**  
**By: William J. Brown, Attorney General, May 28, 1982**

I have before me your request for my opinion whether a board of county commissioners may "renew," at a ten percent increase in cost, an expired contract with a private entity for group medical insurance without compliance with the competitive bidding procedures of R.C. 307.86.

A board of county commissioners is a creature of statute, and may exercise only those powers expressly conferred upon it, or those as may be necessarily

implied from an express power. State ex rel. Shriver v. Board of County Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). A board of county commissioners is authorized to enter into contracts of group medical insurance for the benefit of county officers and employees by R.C. 305.171. Division (A) of that section states in pertinent part:

The board of county commissioners of any county may contract, purchase, or otherwise procure and pay all or any part of the costs of group insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs. . .for county officers and employees and their immediate dependents. . . , issued by an insurance company, a hospital service association. . . , a medical care corporation. . . , a dental care corporation. . . , or a hospital service association in conjunction with an insurance company. . . .

Division (B) of that section deals with contracting for the provision of health care through health care corporations and health maintenance organizations (HMOs) and is not of direct interest in resolving your request. Division (C), however, is of possible interest as it provides a limited exemption from the competitive bidding requirements imposed by R.C. 307.86 as follows:

Section 307.86 of the Revised Code does not apply to the purchase of benefits for county officers or employees under divisions (A) and (B) of this section when such benefits are provided through a jointly administered health and welfare trust fund in which the county. . .and a collective bargaining representative of the county employees. . .agree to participate.

In a conversation between a member of my staff and a representative of your office, however, it was concluded that this division was inapplicable to your request because no such trust fund exists.

The board of county commissioners is required, in most cases, to proceed by competitive bidding when it undertakes to make a major purchase. The competitive bidding requirement is set out at R.C. 307.86, and states in part:

Anything to be purchased, . . .including, but not limited to, any product, . . .or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, by or on behalf of the county. . . , at a cost in excess of five thousand dollars, . . .shall be obtained through competitive bidding.

This section continues to set out certain specific exceptions, which are not applicable to your question. A predecessor of mine has held that "[i]nsofar as purchases of group insurance coverage pursuant to Section 305.171, Revised Code, are concerned, Section 307.86, supra, requires competitive bids if the cost is in excess of \$2000.00 [since increased to \$5000.00]." 1969 Op. Att'y Gen. No. 69-048 at 2-104. As it is my understanding that the cost of the insurance in your question is on the order of \$100,000.00, under the holding of Op. No. 69-048, competitive bidding would be required, and, in fact, your representative stated that the contract of insurance in question was originally awarded by the board of county commissioners after being let for competitive bids.

Your question, however, concerns the "renewal" of an expired contract of insurance at a ten percent increase in premium cost. Additionally, the materials which you have provided indicate that the extent of coverage has been altered to reflect changes in federal Medicare laws, and to include a new prescription drug benefit. I am aware of no express prohibition against the renewal of a contract for group medical insurance. See 1969 Op. Att'y Gen. No. 69-045 at 2-93 ("[t]here is no time limitation set by statute on such a group health insurance contract, but insurance contracts of this type are generally for a one-year term and renewable automatically upon payment of premium after the one year elapses"). Your

representative stated, however, that the expired contract in question has no such provision for automatic renewal, or reservation of a right to renew, at a predetermined cost. In the absence of an express term of this type, the contract has expired. The obtainment of coverage by contract constitutes a new purchase, which must be let for bids. Furthermore, because of the substantial increase in premium amount, changes in extent of coverage, and the addition of the new prescription drug benefit, I hold the belief that the transaction you inquire after is not a "renewal" of the original contract. While only a court of competent jurisdiction may ultimately bind the board to such a factual conclusion, my belief also compels me to advise that a new contract must be let for bids, in accordance with R.C. 307.86, by the board of county commissioners.

Accordingly, it is my opinion, and you are advised, that a board of county commissioners may not renew a contract for group medical insurance, without competitive bidding in accordance with R.C. 307.86, either when that contract lacks an express term for renewal at a predetermined cost, or when significant changes in proposed premium rates, coverage, and benefits have occurred.