

OPINION NO. 2004-004**Syllabus:**

1. If a county has procured a health insurance policy under R.C. 305.171 that grants the county the right to renew the contract, whether or not at a substantial increase in premium, because such right of "renewal" requires the execution of a new contract, such new contract must be competitively bid in accordance with R.C. 307.86, unless the county complies with the requirements of R.C. 307.86(F). In the alternative, if a board of county commissioners
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has negotiated a contract in accordance with R.C. 307.86(F), R.C. 307.86 requires the board to request proposals and renegotiate with issuers as provided in R.C. 307.86(F) at least every three years from the date of signing the original contract. When proceeding under R.C. 307.86(F), a board of county commissioners is not required to engage in competitive bidding as otherwise required by R.C. 307.86.

2. A board of county commissioners may charge its employees whose compensation is fixed by a collective bargaining agreement a sum for health care insurance as dictated by the agreement, while charging a different sum to other county employees, so long as the differences in amount have a rational basis.
3. R.C. 305.171 does not require a board of county commissioners to pay the same percentage of premium on behalf of those county employees who receive family coverage as it pays on behalf of those who receive only individual coverage, so long as the county has a rational basis for making such distinction.
4. The prohibition in Ohio Const. art. II, § 20 against in-term changes in compensation applies only to the term of office an officer is serving when a change in compensation occurs.
5. In the event that the cost of providing health insurance for a county officer under R.C. 305.171 increases during his term of office, without any increase in the insurance coverage provided, a county's payment of the additional cost does not increase the officer's compensation for purposes of Ohio Const. art. II, § 20. In such a situation, if a county required a mid-term county officer to pay the additional premium from his personal financial resources in order to continue receiving the same amount of coverage, that requirement would constitute an in-term decrease in compensation prohibited by Ohio Const. art. II, § 20.
6. If the cost of a county officer's health insurance premium increases mid-term due to an increase in the coverage provided, payment of the increased premium by a county would be an in-term change in compensation prohibited by Ohio Const. art. II, § 20. In that situation, however, a county officer may take advantage of such a mid-term increase in coverage by paying the additional cost from his personal financial resources for the remainder of the term he was serving when the increased coverage was implemented, thereby avoiding any in-term increase in compensation. Should the officer discontinue payment from his personal financial resources for the increased health care coverage provided by the county during the term the officer was serving when the increased coverage began, while continuing to receive the increased coverage at county expense, such action would constitute an in-term increase in compensation prohibited by Ohio Const. art. II, § 20.

7. Should a board of county commissioners increase the percentage of the health insurance premiums it pays on behalf of county personnel, Ohio Const. art. II, § 20 prohibits a county officer from receiving the amount of any such increase for the remainder of the term the officer was serving when the increase commenced.

To: Richard D. Welch, Morgan County Prosecuting Attorney, McConnellsville, Ohio
By: Jim Petro, Attorney General, January 22, 2004

You have requested an opinion concerning the power of a board of county commissioners to make various changes in the manner in which it provides health care benefits for the county's officers and employees. You specifically ask:

1. Must a Board of County Commissioners engage in the competitive bidding process to secure new health insurance benefits for its employees after each contract for such benefits expires or may it simply renew the contract with the existing contractor despite price increases in the premium costs?
2. Is it permissible for county employees covered by collective bargaining agreements and those not covered by such agreements to pay different premium costs for the same health insurance coverage without violating any law, rule, or regulation?
3. Is it permissible for elected officials to elect to pay an increase in health insurance premium costs which results in a net decrease in compensation during their terms of office? If so, is it permissible for the same elected officials to then return to paying a lower premium rate, which in effect increases their total compensation but not to the same level as before they elected to pay the original rate hike, without violating any law or constitutional provision? What is the answer to the same question if an elected official has begun a new term of office when there is an opportunity to return to paying a lower rate for the health insurance premiums that results in a net increase in his compensation[?]
4. Is it permissible for a Board of Commissioners to pay 100% of an employee's individual health insurance premium cost but not pay 100% of the cost of health insurance premiums for those employees desiring family coverage?
5. If, due to severe economic crisis or a sudden increase in health insurance premium costs, a Board of County Commissioners is unable to continue paying employee health insurance premium costs at a previously established rate, even though required in a collective bargaining agreement, may the Board change its policy on how and at what rate it will pay employee health insurance premium costs without violating any law or being liable for engaging in an unfair labor practice? If so, what procedure must it follow to do so?

Procurement of Health Care Insurance under R.C. 305.171

Your first question asks whether a board of county commissioners must use competitive bidding in order to procure health insurance coverage for county officers and employees. Let us begin by examining the provisions of R.C. 305.171.

R.C. 305.171 authorizes a board of county commissioners to procure group health care insurance for county officers and employees, in part, as follows:

(A) The board of county commissioners of any county may contract for, purchase, or otherwise procure and pay *all or any part* of the cost of *group insurance policies* that may provide benefits including, but not limited to, hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, group legal services, or group life insurance, or a combination of any of the foregoing types of insurance or coverage for county officers and employees and their immediate dependents *from the funds or budgets from which the officers or employees are compensated* for services, issued by an insurance company. (Emphasis added.)

R.C. 305.171 also establishes alternative methods of providing group health care coverage for county employees.¹ R.C. 305.171 is silent regarding competitive bidding in the procurement of health care coverage other than under R.C. 305.171(C), *see generally* note one, *supra*. We must, therefore, examine R.C. 307.86, which establishes the general competitive bidding requirement applicable to county purchases, to determine its application to a county's procurement of health care coverage under R.C. 305.171, other than under R.C. 305.171(C).

Competitive Bidding Requirements in the Procurement of Health Insurance Coverage

Competitive bidding by county contracting authorities² is governed in part by R.C. 307.86. As recently amended in Am. Sub. H.B. 95, 125th Gen. A. (2003) (eff., in part, Sept. 26, 2003), R.C. 307.86, with certain exceptions, requires that anything to be purchased, leased, or constructed at a cost in excess of twenty-five thousand dollars be obtained through competitive bidding.³ If the cost of procuring group health insurance coverage authorized

¹*See, e.g.*, R.C. 305.171(B) (plans of health care services with health insuring corporations holding certificates of authority under [R.C. Chapter 1751]); R.C. 305.171(C) (authorizing a county to provide health care coverage through a jointly administered health and welfare trust fund in which the county or a county contracting authority and a collective bargaining representative agree to participate and providing that the competitive bidding requirements of R.C. 307.86 are inapplicable to the provision of health care coverage under R.C. 305.171(C)); R.C. 305.171(E) (individual or joint-self insurance program authorized by R.C. 9.833); R.C. 305.171(F) (cafeteria plans); R.C. 305.171(G) (cash payment in lieu of benefits).

²For purposes of R.C. 307.86, the term "contracting authority" means "any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof." R.C. 307.92. The board of county commissioners is the contracting authority for purposes of procuring group health insurance under R.C. 305.171.

³*See generally* R.C. 307.87 (notice requirements for bidding); R.C. 307.88 (contents of bids and bond requirement); R.C. 307.89 (acceptance of bid); R.C. 307.90 (award of contract to

by R.C. 305.171, other than under R.C. 305.171(C), will exceed twenty-five thousand dollars, R.C. 307.86 requires the county, with one exception, to engage in the competitive bidding process established by R.C. 307.86-92. See 1991 Op. Att'y Gen. No. 91-048.

This exception is described in R.C. 307.86(F), which excepts a purchase from competitive bidding if:

The purchase consists of any form of an *insurance policy* or contract authorized to be issued under [R.C. Title XXXIX] or any form of *health care plan* authorized to be issued under [R.C. Chapter 1751], or any combination of such policies, contracts, or plans that the contracting authority is authorized to purchase, and the *contracting authority* does *all* of the following:

(1) Determines that compliance with the requirements of this section would increase, rather than decrease, the cost of the purchase;

(2) Employs a competent consultant to assist the contracting authority in procuring appropriate coverages at the best and lowest prices;

(3) *Requests issuers* of the policies, contracts, or plans to *submit proposals* to the contracting authority, in a form prescribed by the contracting authority, setting forth the *coverage* and *cost* of the policies, contracts, or plans as the contracting authority desires to purchase;

(4) *Negotiates* with the issuers for the purpose of purchasing the policies, contracts, or plans at the *best and lowest price* reasonably possible. (Emphasis added.)

Thus, when a board of county commissioners exercises its authority under R.C. 305.171, other than under R.C. 305.171(C), to obtain a group health insurance policy at a cost in excess of twenty-five thousand dollars, R.C. 307.86 requires the board to engage in competitive bidding, unless the board complies with all the requirements of R.C. 307.86(F)(1)-(4). See *Kirtley v. Portage County Bd. of Comm'rs*, No. 95-P-0013, 1995 Ohio App. LEXIS 4770 (Portage County Oct. 27, 1995); 1991 Op. Att'y Gen. No. 91-048. R.C. 307.86 further requires that, "[a]ny contracting authority that negotiates a contract under division (F) of this section shall request proposals and renegotiate with issuers in accordance with that division at least every three years from the date of the signing of such a contract," (emphasis added).

Renewal of Insurance Policies Procured Under R.C. 305.171

Your particular concern is whether a county must engage in competitive bidding in order to "renew" a group health insurance policy if such renewal calls for a significantly increased premium. In order to address this concern, we must understand the meaning and effect of "renewing" a contract.

In *State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 457-58, 166 N.E.2d 365 (1960), the court explained the difference between the renewal of a contract and the extension of a contract, in part, as follows:

"lowest and best bidder"; system of preferences); R.C. 307.91 (procedure when all bids are rejected).

A contract containing an option to renew has the effect of granting a right to execute a *new* [(emphasis in original)] *contract* upon exercise of the option and the new contract is operative immediately after the terminal date of the original agreement. In other words, a contract containing a renewal option constitutes a present grant only for the original term, and a *new contract* must be executed at the end of such term if the option to renew is to be exercised. On the other hand, a contract which may be characterized as one containing an *option to extend* an agreement constitutes a present grant which, upon exercise of the option, operates to extend the term of the original agreement and the contract then becomes one for both the original and the extended term. (Emphasis added.)

Under the *Preston* court's analysis, a "renewal" of a contract requires the execution of a new contract. See *Casto v. State Farm Mutual Automobile Ins. Co.*, 72 Ohio App. 3d 410, 413, 594 N.E.2d 1004 (Franklin County 1991) ("[t]he renewal of an insurance policy is generally considered a *new contract* of insurance to which the requirements of offer and acceptance apply" (citation omitted; emphasis added)); 1982 Op. Att'y Gen. No. 82-038, at 2-113 (finding that, unless an insurance contract has a provision for automatic renewal, or reservation of a right to renew, at a predetermined cost, the contract expires at the end of its term. Obtaining subsequent insurance coverage would require "a new purchase, which must be let for bids"). See generally *Local 4501, CWA v. Ohio State Univ.*, 24 Ohio St. 3d 191, 194, 494 N.E.2d 1082 (1986) (finding that certain university service contracts were not merely renewals of earlier contracts because, "[t]he university was under no obligation to renew the contracts in question, and each renewal was for a new term and supported by new consideration. As such, the 'renewals' are new contracts"). In contrast, an extension of a contract does not require entering into a new contract, but merely increases the term of the original contract under the conditions specified in the original contract.⁴

Accordingly, if the county chooses to "renew" a contract of insurance procured under R.C. 305.171, such a "renewal" requires the execution of a new contract. Because a new contract of insurance, whether or not at a significant increase in premium, constitutes a new agreement between the county and the insurance provider, it is subject to the competi-

⁴Whether the particular contract under which the county is currently insured provides for an extension or renewal of the contract must be determined from the specific language of that contract. See *Gwinn v. John Hancock Mutual Life Ins. Co.*, 142 Ohio St. 510, 53 N.E.2d 515 (1944) (syllabus, paragraph one) ("[t]he right of an employer, under a group insurance policy issued to him on the lives of his employees, to renew such policy is governed by the terms of the insurance contract"). It is inappropriate to use a formal opinion to interpret the provisions of a specific contract. See, e.g., 1990 Op. Att'y Gen. No. 90-111, at 2-502 (the Attorney General is "unable to make findings of fact or to interpret provisions of a particular contract or agreement").

We note, in addition, that R.C. 307.86 would require either such option to have been included in the specifications when the contract was bid. See generally, e.g. 1989 Op. Att'y Gen. No. 89-064 (syllabus) ("[w]here the board of county commissioners, as lessee, has entered into a lease agreement through competitive bidding, pursuant to R.C. 307.86-92, it may not subsequently agree to an increased lease term of five years in exchange for renovations to the leasehold premises as part of the original lease agreement where such additional five-year term was not included in the notice and specifications on which the bids were based").

tive bidding requirements of R.C. 307.86 if the amount of the purchase is more than twenty-five thousand dollars, unless the county proceeds to acquire such insurance coverage pursuant to the terms of R.C. 307.86(F).

In answer to your first question, therefore, we conclude that, if a county has procured a group health insurance policy under R.C. 305.171 that grants the county the right to renew the contract, whether or not at a substantial increase in premium, because such right of "renewal" requires the execution of a new contract, such new contract must be competitively bid in accordance with R.C. 307.86, unless the county complies with the requirements of R.C. 307.86(F). In the alternative, if a board of county commissioners has negotiated a contract in accordance with R.C. 307.86(F), R.C. 307.86 requires only that the board request proposals and renegotiate with issuers at least every three years from the date of signing the original contract. When proceeding under R.C. 307.86(F), a board of county commissioners is not required to engage in competitive bidding as otherwise required by R.C. 307.86. *Kirtley v. Portage County Bd. of Comm'rs.*

Health Insurance Benefits for County Employees Under R.C. 305.171

Your second question asks whether it is "permissible for county employees covered by collective bargaining agreements and those not covered by such agreements to pay different premium costs for the same health insurance coverage without violating any law, rule or regulation." Your fourth question asks whether a board of county commissioners may pay one hundred percent of an employee's health insurance premium for individual coverage, while paying less than one hundred percent of an employee's health insurance premium for family coverage. Because both these questions concern differences in the amounts paid by a county on behalf of county employees for health insurance coverage provided under R.C. 305.171, they involve certain common issues. We will, therefore, address these questions together.

By its terms, R.C. 305.171(A) authorizes a board of county commissioners to procure "and pay all or any part of the cost of group insurance policies" covering "county officers and employees and their immediate dependents," (emphasis added). As explained in *State ex rel. Belknap v. Lavelle*, 18 Ohio St. 3d 180, 181, 480 N.E.2d 758 (1985):

Two points are evident from the terms of [R.C. 305.171]. First, the commissioners are not required to provide health insurance; second, if they do, they have the option of paying only a portion of the premium. It is obvious, from the plain language of this statute, that the board of county commissioners is under no obligation to pay the whole premium for health insurance of county employees.

See generally 1993 Op. Att'y Gen. No. 93-045, at 2-223 ("R.C. 305.171(A) authorizes the board of county commissioners to provide health insurance benefits for its officers and employees and to pay all or only a portion of the premium. 1989 Op. Att'y Gen. No. 89-003 (syllabus, paragraph one)"). R.C. 305.171 also authorizes a board of county commissioners to change the portion of the premium the county pays on behalf of county personnel. *See* 1984 Op. Att'y Gen. No. 84-069. Nothing in R.C. 305.171, however, requires a board of county commissioners to provide uniform health insurance coverage for all county personnel⁵ or to provide health care insurance to all county personnel on the same terms.

⁵*Cf.* R.C. 505.60(B) (with respect to township personnel, stating, in part, "[i]f the board [of township trustees] procures any insurance policies under this section, the board shall pro-

In exercising its authority under R.C. 305.171, a board of county commissioners must, of course, exercise a reasonable discretion and have a rational basis for any differences in benefits it awards to county personnel. *See generally, e.g.*, 1984 Op. Att'y Gen. No. 84-086, at 2-295 (modified on other grounds by 1990 Op. Att'y Gen. No. 90-064) (subject to statutory limitations on granting fringe benefits, "a public employer may make distinctions among groups of employees, provided that such distinctions are reasonable, so that state and federal equal protection requirements are satisfied" (citations omitted)); 1981 Op. Att'y Gen. No. 81-082, at 2-323 ("[a]ny distinction in benefits awarded by the county commissioners must ... comport with the equal protection guarantees of Ohio Const. art. I, § 2 and the fourteenth amendment of the United States Constitution" (footnote omitted)).

Health Care Insurance as Part of Compensation

Payment for health care coverage from public funds is a fringe benefit, a part of the compensation paid to an officer or employee. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); *Madden v. Bower*, 20 Ohio St. 2d 135; 254 N.E.2d 357 (1969). As recognized by 1995 Op. Att'y Gen. No. 95-027, at 2-138, "R.C. 305.171 authorizes a board of county commissioners to procure and pay all or any part of the cost of group health insurance policies for county officers and employees and their immediate dependents. The county children services board, as the appointing authority of its employees, may provide them with health insurance benefits in excess of those granted by the county." Thus, an individual county appointing authority may choose to increase its employees' compensation by paying a greater portion of its employees' health insurance premiums than the county commissioners have elected to pay for other county personnel. The actions of individual county appointing authorities with the power to fix their employees' compensation may thus vary the amount of county funds that is used to pay for certain county employees' health insurance coverage under R.C. 305.171. *See* 1978 Op. Att'y Gen. No. 78-029, at 2-70 ("the county office holders enumerated in R.C. 325.27 are, under the terms of R.C. 325.17, empowered to authorize [the payment of medical insurance premiums] on behalf of their employees. The payment of such premiums is not conditioned upon the concurrent action of the board of county commissioners granting similar benefits to other county employees").

Collective Bargaining for County Employees

You have asked whether a county may pay on behalf of those county employees covered by a collective bargaining agreement a certain portion of the premium for health care coverage, as dictated by that agreement, while, at the same time, paying a different portion of such premium for other county employees. In order to address this question, let us briefly examine the statutory framework for collective bargaining by county employees.

As a "public employer," R.C. 4117.01(B), a county has a duty to bargain collectively with an exclusive representative of a bargaining unit of county employees. R.C. 4117.04(B). Pursuant to R.C. 4117.10(A), "[a]n agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms

vide *uniform coverage* under these policies for township officers and full-time township employees and their immediate dependents, ... from the funds or budgets from which the officers or employees are compensated for services" (emphasis added)).

and conditions of public employment covered by the agreement.”⁶ Because the provision of health insurance is a matter subject to collective bargaining, *see State Employment Relations Bd. v. State of Ohio*, 96 Ohio App. 3d 535, 645 N.E.2d 759 (Franklin County 1994),⁷ such an agreement may fix the portion of the insurance premium the county must pay on behalf of each employee covered by the agreement.

⁶The manner in which collective bargaining may affect the statutorily prescribed compensation of county employees was explained, in part, by 1998 Op. Att’y Gen. No. 98-028, at 2-150 to 2-153, as follows:

After the enactment of R.C. Chapter 4117, in order to ascertain the amount and types of compensation to which a county employee was entitled, it became necessary to determine whether the employee was subject to a collective bargaining agreement and whether the agreement addressed the particular benefit. If so, the terms of the agreement, with certain limited exceptions, prevailed over any statutory provisions regarding that benefit. *See generally* R.C. 4117.08; R.C. 4117.10(A); *Streetsboro Educ. Ass’n v. Streetsboro City School Dist. Bd. of Educ.*, 68 Ohio St. 3d 288, 291, 626 N.E.2d 110, 113 (1994) (“[w]hen a provision in a collective bargaining agreement addresses a subject also addressed by a state or local law, so that the two conflict, R.C. 4117.10(A) delineates whether the collective bargaining provision or the law prevails. To do this, R.C. 4117.10(A) specifies certain areas in which laws will prevail over conflicting provisions of collective bargaining agreements. Consequently, where a provision of a collective bargaining agreement is in conflict with a state or local law pertaining to a specific exception listed in R.C. 4117.10(A), the law prevails and the provision of the agreement is unenforceable. However, if a collective bargaining provision conflicts with a law which does not pertain to one of the specific exceptions listed in R.C. 4117.10(A), then the collective bargaining agreement prevails”); *City of Cincinnati v. Ohio Council 8, AFSCME, AFL-CIO*, 61 Ohio St. 3d 658, 576 N.E.2d 745 (1991). In the absence of a collective bargaining agreement governing the provision of that benefit for the employee, it remained necessary to utilize the *Ebert* court’s analysis to determine a county employee’s right to the benefit at issue. *See generally State ex rel. Chavis v. Sycamore City School Dist. Bd. of Educ.*, 71 Ohio St. 3d 26, 29, 641 N.E.2d 188, 192 (1994) (“[a] collective bargaining agreement does not prevail over conflicting laws where it either does not specifically cover certain matters, or no collective bargaining agreement is in force” (various citations omitted)). (Footnote omitted.)

⁷*See also* 1989 Op. Att’y Gen. No. 89-009, at 2-34 to 2-35 n.1 (finding the provision of health care insurance to be an appropriate subject for collective bargaining under R.C. Chapter 4117); 1980 Op. Att’y Gen. No. 80-030 (syllabus) (finding that, prior to the enactment of R.C. Chapter 4117, “[a] county may provide health and medical coverage for a particular group of county employees, even though those benefits differ from the benefits procured for other county employees, where the benefits are provided through a jointly administered health and welfare trust fund in which the county and the collective bargaining representative of the employees agree to participate”).

We have found no requirement in R.C. Chapter 4117 or in R.C. 305.171 that limits the portion of health insurance premiums a county may pay pursuant to a collective bargaining agreement in relation to the amount the county's board of commissioners has determined to pay under R.C. 305.171 on behalf of other county employees.⁸ In answer to your second question, therefore, we conclude that a board of county commissioners may charge its employees whose compensation is fixed by a collective bargaining agreement a sum for health care insurance as dictated by the agreement, while charging a different sum to other county employees, so long as the differences in amount have a rational basis.⁹

Payment of Premiums for Individual or Family Coverage

You also question whether a board of county commissioners may pay one hundred percent of the premium for those county employees receiving individual health care coverage, while paying only a smaller percentage of the premium for those county employees receiving family coverage. Again, R.C. 305.171 contains no requirement that a county provide uniform health care coverage for all county employees or that the county provide

⁸In certain instances, the General Assembly has limited the power of a county appointing authority to vary a particular statutory fringe benefit for non-bargaining unit employees when that benefit is otherwise provided for in a collective bargaining agreement covering other employees of that appointing authority. *See, e.g.*, R.C. 124.38 (stating in part, "[n]otwithstanding this section or any other section of the Revised Code, any appointing authority of a county office, department, commission, board, or body may, upon notification to the board of county commissioners, establish alternative schedules of sick leave for employees of the appointing authority for whom the state employment relations board has not established an appropriate bargaining unit pursuant to [R.C. 4117.06], provided that the alternative schedules are *not inconsistent with the provisions of a collective bargaining agreement covering other employees of that appointing authority*" (emphasis added)). R.C. 305.171 does not, however, impose such a limitation. *See generally* 1999 Op. Att'y Gen. No. 99-039 (power of county appointing authorities to establish alternative schedules of sick leave and vacation leave). We are also assuming that the collective bargaining agreements covering the various bargaining units within the county do not prohibit the type of premium differential contemplated by the county commissioners.

⁹Your final question addresses another aspect of collective bargaining for county employees. Specifically, you ask, "[i]f, due to severe economic crisis or a sudden increase in health insurance premium costs, a Board of County Commissioners is unable to continue paying employee health insurance premium costs at a previously established rate, even though required in a collective bargaining agreement, may the Board change its policy on how and at what rate it will pay employee health insurance premium costs without violating any law or being liable for engaging in an unfair labor practice? If so, what procedure must it follow to do so?" At issue in a pending case is whether a board of county commissioners that changed health insurance benefits for county personnel under R.C. 305.171 has committed an unfair labor practice under R.C. 4117.11 with respect to certain county employees covered by a collective bargaining agreement. As explained in 1972 Op. Att'y Gen. No. 72-097 (syllabus, paragraph two): "When a request for an Opinion of the Attorney General presents a question, which is at that time pending in a court proceeding, it would, in almost all cases, be improper for the Attorney General to express his opinion on such a question." We are unable, therefore, to address your question at this time. *See* 1986 Op. Att'y Gen. No. 86-039, at 2-198 (the Attorney General is "unable to use the opinion-rendering function of this office to make determinations concerning the validity of particular documents, or the rights of persons under such documents").

such coverage to all county employees on the same terms.¹⁰ Rather, R.C. 305.171(A) expressly authorizes a board of county commissioners to “procure and pay *all or any* part of the cost of group insurance policies” of the types mentioned therein “or a *combination of any of the foregoing types of insurance or coverage* for county officers and employees and their immediate dependents from the funds or budgets from which the officers or employees are compensated for services,” (emphasis added). It 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. See, e.g., *State Employment Relations Bd. v. State of Ohio*. We have no basis for finding that a board of county commissioners that provides health insurance benefits for county employees under R.C. 305.171 may not pay the entire premium for an employee’s individual coverage, while paying only a portion of the premium of an employee who elects to receive family coverage. The county commissioners must, of course, have a rational basis for any such difference. See 1984 Op. Att’y Gen. No. 84-086, at 2-295 (modified on other grounds by 1990 Op. Att’y Gen. No. 90-064).

We conclude, therefore, in answer to your fourth question, that R.C. 305.171 does not require a board of county commissioners to pay the same percentage of premium on behalf of those county employees who receive family coverage as it pays on behalf of those who receive only individual coverage, so long as the county has a rational basis for making such distinction.

Change in Payment by County Officers for Health Insurance

Your next set of questions concerns various changes in the amounts paid by county officers for their health care insurance. You specifically ask:

[1.] Is it permissible for elected officials to elect to pay an increase in health insurance premium costs which results in a net decrease in compensation during their terms of office?

[2.] If so, is it permissible for the same elected officials to then return to paying a lower premium rate, which in effect increases their total compensation but not to the same level as before they elected to pay the original rate hike, without violating any law or constitutional provision?

[3.] What is the answer to the same question if an elected official has begun a new term of office when there is an opportunity to return to paying a lower rate for the health insurance premiums that results in a net increase in his compensation[?]

¹⁰Cf. 1990 Op. Att’y Gen. No. 90-064 (syllabus) (even though R.C. 505.60 requires health insurance benefits procured thereunder to be “uniform” for township officers, township employees, and the dependents of both, the opinion found that a 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*” (emphasis added)).

Compensation of County Officers and Ohio Const. art. II, § 20

Pursuant to article II, § 20 of the Ohio Constitution,¹¹ the compensation of a county officer may not be changed during his term of office.¹² *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976). The payment of health insurance premiums from public funds for the benefit of a county officer is part of that officer's compensation for purposes of Ohio Const. art. II, § 20. *Id.*; 1981 Op. Att'y Gen. No. 81-099, at 2-374 (“[i]nsurance benefits for public officers *paid for out of public funds* are ... compensation which comes within the purview of art. II, § 20” (emphasis added)). See *Madden v. Bower*, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969) (syllabus, paragraph one) (“[a]s to each county employee receiving the right to the benefits of a group health insurance plan procured by a board of county commissioners pursuant to Revised Code Section 305.171, that part of the premium which is paid from public funds is a part of the cost of the public service performed by each such employee”). Thus, the prohibition in Ohio Const. art. II, § 20 against in-term changes in compensation includes in-term changes in payments for health insurance by a county for its officers. *State ex rel. Parsons v. Ferguson*.

The period to which the prohibition against changes in compensation applies was explained by the court in *State ex rel. Glander v. Ferguson*, 148 Ohio St. 581, 76 N.E.2d 373 (1947) (syllabus, paragraph one), as follows:

The words, “during his existing term,” as used in Section 20 of Article II of the Constitution of Ohio, which inhibits a change of “salary of any officer during his existing term,” apply strictly to the term to which the officer is appointed or elected and not to the period constituting the statutory term of the office.

Thus, the prohibition in art. II, § 20 against in-term changes in compensation applies only to the term of office an officer is serving when a change in compensation occurs. Once an officer begins a new term of office, the officer is subject to any change in compensation that became effective during his previous term. See 2001 Op. Att'y Gen. No. 2001-025, at 2-139.

Circumstances Causing Changes in Amount of Insurance Premium Paid by A County

Your third set of questions concerns whether county officers may elect to use their personal financial resources to pay the increased cost of health insurance coverage “which results in a net decrease in compensation during their terms of office.”¹³ The assumption underlying this series of questions appears to be that a county officer's use of his personal

¹¹Ohio Const. art. II, § 20 states: “The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.” See generally *State ex rel. Artmayer v. Board of Trustees*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) (syllabus) (stating in part, “[t]he terms ‘salary’ and ‘compensation,’ as used in Section 20, Article II of the Ohio Constitution, are synonymous”).

¹²Although your questions ask specifically about elected county officers, we will refer to them simply as county officers, because, for purposes of Ohio Const. art. II, § 20, there is no difference between elected and appointed officers. *State ex rel. McNamara v. Campbell*, 94 Ohio St. 403, 115 N.E. 29 (1916) (syllabus, paragraph three).

¹³We are assuming that you are not asking whether a mid-term county officer may voluntarily waive the county's payment of any or all of the cost of health insurance provided under R.C. 305.171. As recently explained in 2003 Op. Att'y Gen. No. 2003-027, at 2-225:

financial resources to pay the amount of any mid-term increase in health insurance premiums necessarily decreases the officer's compensation for purposes of Ohio Const. art. II, § 20. As we will explain, however, whether a county officer's mid-term payment of such an increase from his personal financial resources constitutes a decrease in compensation prohibited by Ohio Const. art. II, § 20 depends upon the reason for the increase in premium.

Let us first examine the situation in which the officer's health insurance premium increases, but without any change in the coverage provided. As concluded in syllabus, paragraph two, of 1989 Op. Att'y Gen. No. 89-003:

The payment of an increase in the premium cost of a group insurance policy for an elected county officer and his immediate dependents does not violate the prohibition of Ohio Const. art. II, § 20, against an in-term increase of compensation of county elected officers, provided that the *benefits procured are unchanged, and the total percentage of the entire premium cost paid by the board of county commissioners remains the same.* (Emphasis added.)

The 1989 opinion based its conclusion upon the fact that, in such circumstances, although there is an increased cost to the county, the officer receives no increase in benefits. Thus, should the cost of providing health care insurance for a county officer increase mid-term, without change in the insurance coverage itself, the county's payment of such increased cost on behalf of such officer does not constitute an impermissible in-term change in the officer's compensation.¹⁴ In such a situation, if the county were to require an officer, during the remainder of the term the officer was serving when the increase occurred, to pay the increased premium amount from his personal financial resources, such requirement would constitute an impermissible reduction in the officer's compensation for purposes of Ohio Const. art. II, § 20.

If, on the other hand, a county increases the health insurance coverage provided to a county officer, which results in a higher insurance premium, the county's payment of such increased amount on behalf of an officer during the term the officer was serving when the increase occurred would constitute an in-term increase in the officer's compensation that is

In Ohio, it is well established that "the doctrine of waiver is applicable to all personal rights and privileges, whether secured by contract, conferred by statute, or guaranteed by the Constitution, provided that the waiver does not violate public policy." *State ex rel. Hess v. City of Akron*, 132 Ohio St. 305, 307, 7 N.E.2d 411 (1937). Under this doctrine, the Ohio Supreme Court has determined that "[t]he occupant of a public office may waive part of the established salary thereof," and "[s]uch a waiver is not contrary to public policy." (Various citations omitted.)

2003 Op. Att'y Gen. No. 2003-027 further concluded that neither a public officer's waiver of his statutorily prescribed compensation nor his discontinuation of such waiver constitutes an in-term change in compensation prohibited by Ohio Const. art. II, § 20.

¹⁴See 1981 Op. Att'y Gen. No. 81-099 (syllabus) ("[a]n increase in the cost of the insurance coverage furnished to elected township and county officers, without a corresponding increase in the extent of the insurance benefits, is not an in-term increase in compensation prohibited by Ohio Const. art. II, § 20").

prohibited by Ohio Const. art. II, § 20. By paying the increased premium from his personal financial resources for the remainder of the term the officer was serving when the increased coverage was implemented, however, the officer may take advantage of the increase in insurance coverage without receiving an in-term increase in compensation for purposes of Ohio Const. art. II, § 20. *See* 2001 Op. Att'y Gen. No. 2001-025, at 2-139 ("Ohio Const. art. II, § 20 does not prohibit a township trustee or clerk, who is holding office at the time the board of township trustees adopts a resolution pursuant to R.C. 505.60 to provide health insurance benefits to township officers and employees, from receiving such benefits if he pays the entire amount of the premiums from his personal financial resources"); 1975 Op. Att'y Gen. No. 75-061 (where the amount and rate of coverage for life insurance purchased by the state for officers and employees increase, it would not be contrary to Ohio Const. art. II, § 20 for an in-term state elected official to accept the increased coverage by paying the premiums from his personal funds). Should the officer discontinue payment from his personal financial resources of such additional cost during the term the officer was serving when the increased coverage was implemented, while continuing to receive the increased coverage at county expense, the result would be an in-term increase in compensation that is prohibited by Ohio Const. art. II, § 20.

Finally, it is possible that a board of county commissioners may increase the percentage of premiums paid by the county for health insurance benefits provided under R.C. 305.171, without any change in the coverage provided. Ohio Const. art. II, § 20 would prohibit a county officer from taking advantage of such an increase during the term the officer is serving when the increase is implemented. 1984 Op. Att'y Gen. No. 84-069, at 2-224 ("[b]y assuming and paying a greater portion of an officer's health insurance premiums than that paid when the officer commenced his term, the county is extending a more valuable fringe benefit to the officer and is thus increasing the officer's compensation. Therefore, a county elected officer may not receive the increase until the term which he was serving at the time of the increase expires").¹⁵ In order to comply with the prohibition against in-term changes in compensation in such a situation, a county officer may not accept the county's payment of such increased percentage during the term the officer is serving when the increase is implemented. In such a situation, there would be no additional expenditure of the officer's personal financial resources in order to retain the same insurance benefits he was receiving at the beginning of his term of office and no violation of Ohio Const. art. II, § 20.

In answer to your third set of questions, we conclude that, in the event that the cost of providing health insurance for a county officer under R.C. 305.171 increases during his term of office, without any increase in the insurance coverage provided, a county's payment of the additional cost does not increase the officer's compensation for purposes of Ohio Const. art. II, § 20. In such a situation, if a county required a mid-term county officer to pay the additional premium from his personal financial resources in order to continue receiving

¹⁵*See* 1997 Op. Att'y Gen. No. 97-052 (finding that, although Ohio Const. art. II, § 20 prohibited the Ohio Water Development Authority from commencing payment for health care insurance for its officers mid-term, payment for such insurance by the officials from their personal funds did not constitute an in-term change in compensation prohibited by Ohio Const. art. II, § 20); 1993 Op. Att'y Gen. No. 93-045 (where a county decreases the percentage of premiums paid by the county on behalf of county officers for insurance coverage, without any change in the amount of coverage provided, such a decrease may not be applied to in-term county officers).

the same amount of coverage, that requirement would constitute an in-term decrease in compensation prohibited by art. II, § 20.

On the other hand, if the cost of such officer's health insurance premium increases mid-term due to an increase in the coverage provided, payment of the increased premium by a county would be an in-term change in compensation prohibited by art. II, § 20. In that situation, however, a county officer may take advantage of such a mid-term increase in coverage by paying the additional cost from his personal financial resources for the remainder of the term he is serving when the increased coverage is implemented, thereby avoiding any in-term increase in compensation. Should a county officer, at any time during that same term, discontinue use of his personal funds to pay the increased premium attributable to the increased health care coverage, while continuing to receive the increased insurance coverage at county expense, such an arrangement would be in violation of Ohio Const. art. II, § 20. Upon commencement of a subsequent term of office, however, the officer is no longer prohibited by Ohio Const. art. II, § 20 from accepting the increased health insurance coverage paid from county funds. Thus, once his new term commences, a county officer may discontinue using his personal resources to pay the increased health insurance cost attributable to an increase in insurance coverage procured by the county during his previous term.

Finally, in the event that a board of county commissioners increases the percentage of the health insurance premiums it pays on behalf of county personnel, Ohio Const. art. II, § 20 prohibits a county officer from receiving the amount of any such increase for the remainder of the term the officer was serving when the increase commenced.

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. If a county has procured a health insurance policy under R.C. 305.171 that grants the county the right to renew the contract, whether or not at a substantial increase in premium, because such right of "renewal" requires the execution of a new contract, such new contract must be competitively bid in accordance with R.C. 307.86, unless the county complies with the requirements of R.C. 307.86(F). In the alternative, if a board of county commissioners has negotiated a contract in accordance with R.C. 307.86(F), R.C. 307.86 requires the board to request proposals and renegotiate with issuers as provided in R.C. 307.86(F) at least every three years from the date of signing the original contract. When proceeding under R.C. 307.86(F), a board of county commissioners is not required to engage in competitive bidding as otherwise required by R.C. 307.86.
2. A board of county commissioners may charge its employees whose compensation is fixed by a collective bargaining agreement a sum for health care insurance as dictated by the agreement, while charging a different sum to other county employees, so long as the differences in amount have a rational basis.
3. R.C. 305.171 does not require a board of county commissioners to pay the same percentage of premium on behalf of those county employees who receive family coverage as it pays on behalf of

those who receive only individual coverage, so long as the county has a rational basis for making such distinction.

4. The prohibition in Ohio Const. art. II, § 20 against in-term changes in compensation applies only to the term of office an officer is serving when a change in compensation occurs.
5. In the event that the cost of providing health insurance for a county officer under R.C. 305.171 increases during his term of office, without any increase in the insurance coverage provided, a county's payment of the additional cost does not increase the officer's compensation for purposes of Ohio Const. art. II, § 20. In such a situation, if a county required a mid-term county officer to pay the additional premium from his personal financial resources in order to continue receiving the same amount of coverage, that requirement would constitute an in-term decrease in compensation prohibited by Ohio Const. art. II, § 20.
6. If the cost of a county officer's health insurance premium increases mid-term due to an increase in the coverage provided, payment of the increased premium by a county would be an in-term change in compensation prohibited by Ohio Const. art. II, § 20. In that situation, however, a county officer may take advantage of such a mid-term increase in coverage by paying the additional cost from his personal financial resources for the remainder of the term he was serving when the increased coverage was implemented, thereby avoiding any in-term increase in compensation. Should the officer discontinue payment from his personal financial resources for the increased health care coverage provided by the county during the term the officer was serving when the increased coverage began, while continuing to receive the increased coverage at county expense, such action would constitute an in-term increase in compensation prohibited by Ohio Const. art. II, § 20.
7. Should a board of county commissioners increase the percentage of the health insurance premiums it pays on behalf of county personnel, Ohio Const. art. II, § 20 prohibits a county officer from receiving the amount of any such increase for the remainder of the term the officer was serving when the increase commenced.