

September 26, 2014

The Honorable Jason W. Given
Coshocton County Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812-1116

SYLLABUS:

2014-036

1. Pursuant to R.C. 1901.111, municipal court judges and their spouses and dependents shall be provided group health care coverage. Neither a county nor a municipal corporation is required to provide municipal court judges and their spouses and dependents such coverage at no cost to the judges.
2. Pursuant to R.C. 1901.312, municipal court clerks, deputy clerks, and their spouses and dependents shall be provided group health care coverage. Neither a county nor a municipal corporation is required to provide municipal court clerks, deputy clerks, or their spouses and dependents such coverage at no cost to the clerks or deputy clerks.



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OPINION NO. 2014-036

The Honorable Jason W. Given
Coshocton County Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812-1116

Dear Prosecutor Given:

You have requested an opinion about the provision of health care coverage for judges, clerks, and deputy clerks of a municipal court. Specifically, you have asked whether a municipal corporation is required to provide a municipal court judge, pursuant to R.C. 1901.11 and R.C. 1901.111, and a municipal court clerk and deputy clerks, pursuant to R.C. 1901.312, health care coverage at no cost to the judge, clerk, and deputy clerks when other employees and elected officials of the municipal corporation must pay a premium for their health care coverage.¹

¹ The Attorney General advises a county prosecuting attorney only on matters related to the prosecutor's official duties. 1993 Op. Att'y Gen. No. 93-003, at 2-21 n.1. A county prosecuting attorney is not responsible for furnishing legal advice or representation to a municipal corporation or its officials. *Id.* However, as will be explained later in this opinion, a county is responsible for funding a portion of the costs, premiums, or charges in connection with the health care coverage of municipal court judges, clerks, and in certain instances, deputy clerks. *See* R.C. 1901.111(C); R.C. 1901.312(C). Accordingly, it is appropriate to address your question by way of a formal opinion. *See* R.C. 309.09(A) (“[t]he prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, all other county officers and boards, and all tax-supported public libraries, and any of them may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties”); *see also* R.C. 109.14 (the Attorney General “shall advise the prosecuting attorneys of the several counties respecting their duties”).

We note, however, that Coshocton County is not responsible for funding a portion of the costs, premiums, or charges in connection with the health care coverage of deputy clerks of the Coshocton Municipal Court. *See* R.C. 1901.312(C)(2)(b) (if the municipal court is not a county-operated municipal court, the portion of the expenses for the group health care coverage that is not paid by the deputy clerk or all such expenses shall be paid from the city treasury and subject to apportionment under R.C. 1901.026); *see also* R.C. 1901.03(F) (listing the county-operated municipal courts and not including Coshocton Municipal Court among that list). We will, however, answer your question with

It is helpful to begin with a brief discussion of the municipal court system in Ohio. R.C. Chapter 1901 establishes Ohio's municipal court system and governs the jurisdiction and operation of municipal courts throughout the state. Pursuant to R.C. 1901.01, municipal courts are established in certain named municipalities. You are concerned with the Coshocton Municipal Court, which is established in the City of Coshocton. *See* R.C. 1901.01; R.C. 1901.02. Some municipal courts are designated by the Revised Code as county-operated municipal courts. R.C. 1901.03(F) (listing the county-operated municipal courts). County-operated municipal courts are funded in a manner that differs from the manner in which other municipal courts are funded. *Compare, e.g.,* R.C. 1901.024(D) (“[t]he board of county commissioners of a county in which a county-operated municipal court is located shall pay all of the costs of operation of the municipal court”), *with* R.C. 1901.026(A) (the current operating costs of a municipal court, other than a county-operated municipal court, that has territorial jurisdiction extending beyond the corporate limits of the municipal corporation in which the court is located “shall be apportioned pursuant to this section among all of the municipal corporations and [limited home rule] townships that are within the territory of the court”). While the Coshocton Municipal Court has jurisdiction within all of Coshocton County, *see* R.C. 1901.02(A)-(B), it is not a county-operated municipal court.² *See* R.C. 1901.03(F).

Pursuant to R.C. 1901.07, judges of a municipal court are elected on a nonpartisan ballot for a term of six years. The Coshocton Municipal Court has one full-time judge. R.C. 1901.08. A clerk of court is elected or appointed in each municipal court pursuant to R.C. 1901.31.³ Except in the Carroll County Municipal Court, deputy clerks of a municipal court are appointed by the clerk of court. R.C. 1901.31(H).

respect to deputy clerks of a municipal court because certain counties are responsible for funding expenses associated with the health care coverage of a municipal court's deputy clerks. *See* R.C. 1901.312(C)(1) (“[i]f the municipal court is a county-operated municipal court, the portion of the costs, premiums, or charges [not paid by the clerk or deputy clerk] or all of the costs, premiums, or charges shall be paid out of the treasury of the county”).

² Accordingly, this opinion does not address the manner in which the compensation or health care coverage of judges, clerks, or deputy clerks of a county-operated municipal court are funded.

³ Whether the clerk of a municipal court is elected or appointed is dependent in part upon the population of the territory that the court serves. *See* R.C. 1901.31(A)(1)(a) (except in certain enumerated municipal courts, if the population that a municipal court serves equals or exceeds one hundred thousand, the clerk shall be elected); R.C. 1901.31(A)(2)(a) (except in certain enumerated municipal courts, if the population that a municipal court serves is less than one hundred thousand, the clerk shall be appointed by the court).

Provision of Health Care Coverage for Municipal Court Judges

R.C. 1901.111 addresses the provision of health care coverage for municipal court judges and their spouses and dependents.⁴ Pursuant to R.C. 1901.111(B), the “legislative authority” of a municipal court is responsible for procuring health care coverage for the court’s judges. R.C. 1901.03(B) provides that the “legislative authority” of a municipal court, other than a county-operated municipal court, is the legislative authority of the municipal corporation in which the court is located. The legislative authority of the Coshocton Municipal Court is, therefore, the Coshocton City Council. Accordingly, the Coshocton City Council is responsible for procuring health care coverage for the judge of the Coshocton Municipal Court pursuant to R.C. 1901.111(B), which states:

The legislative authority, after consultation with the judges of the municipal court, shall negotiate and contract for, purchase, or otherwise procure group health care coverage for the judges and their spouses and dependents from insurance companies authorized to engage in the business of insurance in this state under [R.C. Title 39] or health insuring corporations holding certificates of authority under [R.C. Chapter 1751], except that if the county or municipal corporation served by the legislative authority provides group health care coverage for its employees, the group health care coverage required by this section shall be provided, if possible, through the policy or plan under which the group health care coverage is provided for the county or municipal corporation employees.

You have indicated that the Coshocton City Council has procured health care coverage for the municipal court judge through the policy or plan under which group health care coverage is provided for the city’s employees. You have explained that city employees and elected officials must pay a premium for their health care coverage, and you wish to know whether the judge may be required to pay a premium for his health care coverage or whether the coverage must be provided at no cost to the judge.

R.C. 1901.111(C) addresses how the costs associated with the health care coverage of a municipal court judge are to be paid. It states:

The portion of the costs, premiums, or charges for the group health care coverage procured pursuant to division (B) of this section that is not paid by the judges of the municipal court, or all of the costs, premiums, or charges for the group health care coverage if the judges will not be paying any such portion, shall be paid as follows:

....

⁴ For purposes of R.C. 1901.111, “health care coverage” means “sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services.” R.C. 1901.111(A).

(2) If the municipal court is not a county-operated municipal court, the portion of the costs, premiums, or charges or all of the costs, premiums, or charges shall be paid in three-fifths and two-fifths shares from the city treasury and appropriate county treasuries as described in [R.C. 1901.11(C)]. The three-fifths share of a city treasury is subject to apportionment under [R.C. 1901.026].⁵

R.C. 1901.111(C) (emphasis and footnote added). R.C. 1901.111(C) thus requires the county and the city in which a municipal court is located to contribute to the expenses associated with providing health care coverage for judges of the municipal court. It does not, however, require a county or a municipal corporation to provide health care coverage to a municipal court judge at no cost to the judge. Rather, the language of R.C. 1901.111(C) demonstrates that a municipal court judge may be responsible for a portion of the expenses associated with his health care coverage. Specifically, the language referring to “the portion of the costs, premiums, or charges ... that is *not* paid by the judges of the municipal court” implies that a municipal court judge may be responsible for a portion of those expenses. R.C. 1901.111(C) (emphasis added). *See generally Merriam-Webster’s Collegiate Dictionary* 967 (11th ed. 2005) (defining “portion” to mean “an individual’s part or share of something”). Similarly, the language of R.C. 1901.111(C) that states “or all of the costs, premiums, or charges ... if the judges will not be paying any such portion” also indicates that a municipal court judge may be responsible for a portion of the expenses associated with his health care coverage. *See generally Pizza v. Sunset Fireworks Co.*, 25 Ohio St. 3d 1, 4-5, 494 N.E.2d 1115 (1986) (“the word ‘or’ [is used] as a function word indicating an alternative between different or unlike things”); *Merriam-Webster’s Collegiate Dictionary* 872 (11th ed. 2005) (defining the word “or” as a function word used to indicate an alternative). Thus, pursuant to R.C. 1901.111, neither a county nor a municipal corporation is required to provide a municipal court judge health care coverage at no cost to the judge.

It has been suggested, however, that R.C. 1901.11(E) precludes a municipal court judge from having to contribute to the costs associated with his health care coverage. R.C. 1901.11(A) and (B) set the amount of compensation that a municipal court judge is entitled to receive. For example, R.C. 1901.11(B)(1) provides that a full-time judge of a municipal court shall receive \$61,750 per year plus the compensation described in R.C. 141.04(A)(5) that is payable from the state treasury. After setting forth the specific compensation that a municipal court judge is entitled to receive, R.C. 1901.11 states:

⁵ R.C. 1901.026(A) provides that the current operating costs of a municipal court, other than a county-operated municipal court, that has territorial jurisdiction extending beyond the corporate limits of the municipal corporation in which the court is located “shall be apportioned pursuant to this section among all of the municipal corporations and townships that are within the territory of the court.” *See also generally* R.C. 1901.026(D)(2) (for purposes of R.C. 1901.026, “township” means a township that has adopted a limited home rule government pursuant to R.C. Chapter 504).

(E) As used in this section, “compensation” does not include any portion of the cost, premium, or charge for sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services, covering a judge of a municipal court and paid on the judge’s behalf by a governmental entity.

Thus, R.C. 1901.11(E) provides that the statutory compensation of a municipal court judge, as set forth in R.C. 1901.11, does not include any portion of expenses associated with the health care coverage of the judge that is “paid on the judge’s behalf by a governmental entity.”⁶

We must read R.C. 1901.11(E) *in pari materia* with R.C. 1901.111(C), and, in doing so, we “must give them a reasonable construction so as to give proper force and effect to each ... of the statutes.” *State ex rel. Herman v. Klopffleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995 (1995); *see also Blair v. Bd. of Trs. of Sugarcreek Twp.*, 132 Ohio St. 3d 151, 2012-Ohio-2165, 970 N.E.2d 884, at ¶18 (“[a]ll provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously unless they are irreconcilable”). Reading R.C. 1901.11(E) as prohibiting a municipal court judge from having to contribute to the expenses associated with his health care coverage renders meaningless the language of R.C. 1901.111(C) that refers to “[t]he *portion of the costs, premiums, or charges* for the group health care coverage ... *that is not paid by the judges of the municipal court, or all of the costs, premiums, or charges* for the group health care coverage *if the judges will not be paying any such portion.*” (Emphasis added.) That is, if R.C. 1901.11(E) is read to preclude a municipal court judge from contributing to expenses associated with his health care, the language of R.C. 1901.111(C) referring to the portion of such expenses “*not paid by the judges of the municipal court*” becomes meaningless. (Emphasis added.) *See generally* R.C. 1.47(B) (“[i]n enacting a statute, it is presumed that: ... [t]he entire statute is intended to be effective”); *Eastland Joint Vocational Sch. Dist. v. Dep’t of Educ.*, 50 Ohio St. 2d 91, 95, 362 N.E.2d 654 (1977) (“it is presumed that in enacting a statute the General Assembly intended that the entire law be effective”).

In our opinion, R.C. 1901.11(E) may instead be read in harmony with R.C. 1901.111(C) because R.C. 1901.11(E) does not preclude a municipal court judge from having to contribute to the expenses associated with his health care coverage. Rather, R.C. 1901.11(E) excludes from the definition of “compensation” “any portion of the cost, premium, or charge [for health care coverage] covering a judge of a municipal court and *paid on the judge’s behalf by a governmental entity.*” (Emphasis added.) R.C. 1901.11(E), thus, excludes from the definition of “compensation” only those health care coverage expenses that are “paid on the judge’s behalf by a governmental entity.” This definition of “compensation” prevents a governmental entity from deducting its portion of the cost, premium, or charge for the health care coverage of a municipal court judge from the judge’s statutorily prescribed compensation. If R.C. 1901.11(E) did not so define “compensation,” the cost of health insurance premiums paid on a judge’s behalf by a governmental entity would constitute

⁶ R.C. 141.04 contains a similar exclusion with regard to the portion of a municipal court judge’s compensation that is paid from the state treasury. *See* R.C. 141.04(H)(3).

“compensation” for purposes of the statute and would have the effect of reducing the amount of a municipal court judge’s take-home pay. This is because fringe benefits such as a public employer’s payments of health insurance premiums on behalf of an officer or employee are generally considered “as much a part of the compensations of office as a weekly pay check.” *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976); accord 2010 Op. Att’y Gen. No. 2010-017, at 2-108 (“the cost of a health insurance premium paid by an employer on behalf of an employee is included in compensation”); 1978 Op. Att’y Gen. No. 78-029, at 2-69 (“insurance premium payments are a form of compensation”). Accordingly, if R.C. 1901.11 did not otherwise define the term “compensation,” health insurance premiums paid on a municipal court judge’s behalf by a governmental entity would be included within the meaning of “compensation” for purposes of R.C. 1901.11. This would mean that the statutory compensation of a municipal court judge, as set forth in R.C. 1901.11, would include any portion of the cost, premium, or charge for the judge’s health care coverage that is paid on the judge’s behalf by a governmental entity. That is, the cost of health insurance premiums paid on a judge’s behalf by a governmental entity would be considered “compensation” for purposes of R.C. 1901.11, and such payments would have the effect of decreasing the amount of a municipal court judge’s salary.

For example, R.C. 1901.11(B)(1) provides that a full-time judge of a municipal court “shall receive as compensation” \$61,750 per year plus the amount he is entitled to receive from the state treasury pursuant to R.C. 141.04(A)(5). If R.C. 1901.11 did not otherwise define “compensation,” and a governmental entity spent \$10,000 per year on a municipal court judge’s health insurance premiums, the judge would be entitled to receive a salary of \$51,750 per year plus the amount payable from the state treasury. That is, the \$10,000 in health insurance premiums would be considered part of the judge’s statutory compensation and would reduce the amount of salary that the judge is entitled to receive. Because R.C. 1901.11(E) instead excludes a governmental entity’s payment of health insurance premiums on a judge’s behalf from the definition of “compensation,” a full-time municipal court judge is entitled to receive \$61,750 per year, plus the amount payable from the state treasury pursuant to R.C. 141.04(A)(5), regardless of the amount a governmental entity expends on the judge’s behalf for health care coverage. Thus, R.C. 1901.11(E) prevents a governmental entity from deducting its share of the expenses associated with a municipal court judge’s health care coverage from the judge’s statutory compensation. It does not, however, preclude a municipal court judge from having to contribute to the expenses associated with his health care coverage.

It has also been suggested that a municipal court judge need not contribute to the expenses associated with his health care coverage because R.C. 1901.111(B) requires the legislative authority of a municipal court to procure health care coverage for municipal court judges “after consultation with the judges of the municipal court.” We do not interpret the language of R.C. 1901.111(B) requiring “consultation with the judges of the municipal court” as precluding a municipal court judge from having to contribute to the expenses associated with his health care coverage. Rather, this language requires the legislative authority of a municipal court to confer with the judges of the municipal court before procuring health care coverage for the judges. See generally R.C. 1.42 (“[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”); *Black’s Law Dictionary* 335 (8th ed. 2004) (defining “consultation,” in part, as “[t]he act of asking the advice or opinion of someone”); *Webster’s Third New International Dictionary* 490 (unabr. ed. 1993)

(defining “consultation,” in part, as “the act of consulting or conferring”). R.C. 1901.111(B) does not give the judges the authority to set the terms or conditions of their health care coverage.

Based on the foregoing, it is our opinion that neither a county nor a municipal corporation is required to provide municipal court judges and their spouses and dependents health care coverage at no cost to the judges. *Cf. State ex rel. Maloney v. Sherlock*, 100 Ohio St. 3d 77, 2003-Ohio-5058, 796 N.E.2d 897, at ¶52 (discussing judges’ decision to exempt court employees from a ten percent health insurance premium contribution and stating that such decision “is contrary to the State Auditor’s recommendation as well as the prevailing policy in state and private employment requiring an employee contribution and might be considered arbitrary and capricious”); *State ex rel. Belknap v. Lavelle*, 18 Ohio St. 3d 180, 181, 480 N.E.2d 758 (1985) (“the board of county commissioners is under no obligation to pay the whole premium for health insurance of county employees”).

Provision of Health Care Coverage for the Clerk of Court and Deputy Clerks of a Municipal Court

You also have asked whether the clerk and deputy clerks of a municipal court may be required to pay a premium for their health care coverage or whether such coverage must be provided at no cost to the clerk and deputy clerks. The legislative authority of a municipal court is required to procure health care coverage for the clerk and deputy clerks of the municipal court and their spouses and dependents:

The legislative authority, after consultation with the clerk and deputy clerks of the municipal court, shall negotiate and contract for, purchase, or otherwise procure group health care coverage⁷ for the clerk and deputy clerks and their spouses and dependents from insurance companies authorized to engage in the business of insurance in this state under [R.C. Title 39] or health insuring corporations holding certificates of authority under [R.C. Chapter 1751], except that if the county or municipal corporation served by the legislative authority provides group health care coverage for its employees, the group health care coverage required by this section shall be provided, if possible, through the policy or plan under which the group health care coverage is provided for the county or municipal corporation employees.

⁷ For purposes of R.C. 1901.312, “health care coverage” means “sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs, or any combination of those benefits or services.” *See* R.C. 1901.312(A); *see also* R.C. 1901.111(A).

R.C. 1901.312(B).⁸

R.C. 1901.312(C) describes the manner in which costs associated with the health care coverage of municipal court clerks and deputy clerks are to be paid:

The portion of the costs, premiums, or charges for the group health care coverage procured pursuant to division (B) of this section that is not paid by the clerk and deputy clerks of the municipal court, or all of the costs, premiums, or charges for the group health care coverage if the clerk and deputy clerks will not be paying any such portion, shall be paid as follows:

....

(2)(a) If the municipal court is not a county-operated municipal court, the portion of the costs, premiums, or charges in connection with the clerk or all of the costs, premiums, or charges in connection with the clerk shall be paid in three-fifths and two-fifths shares from the city treasury and appropriate county treasuries as described in [R.C. 1901.31(C)]. The three-fifths share of a city treasury is subject to apportionment under [R.C. 1901.026].

(b) If the municipal court is not a county-operated municipal court, the portion of the costs, premiums, or charges in connection with the deputy clerks or all of the costs, premiums, or charges in connection with the deputy clerks shall be paid from the city treasury and shall be subject to apportionment under [R.C. 1901.026]. (Emphasis added.)

Just as the language of R.C. 1901.111(C) does not require a county or municipal corporation to provide health care coverage to a municipal court judge at no cost to the judge, the language of R.C. 1901.312(C) does not require a county or municipal corporation to provide such coverage to the clerk or deputy clerks of a municipal court at no cost to the clerk or deputy clerks. Rather, the language of R.C. 1901.312(C) demonstrates that the clerk and deputy clerks of a municipal court may be responsible for a portion of the expenses associated with their health care coverage. Specifically, the language referring to “[t]he portion of the costs, premiums, or charges ... that is *not* paid by the clerk and deputy clerks of the municipal court” implies that the clerk and deputy clerks may be responsible for a portion of those expenses. R.C. 1901.312(C) (emphasis added). Likewise, the language of R.C. 1901.312(C) that states “or all of the costs, premiums, or charges ... if the clerk and deputy clerks will not be paying any such portion” also indicates that the clerk and deputy clerks of a municipal court may be responsible for a portion of the expenses associated with their health care coverage. *See generally Pizza v. Sunset Fireworks Co.*, 25 Ohio St. 3d at 4-5 (“the word ‘or’ [is used] as a function word indicating an alternative between different or unlike things”).

⁸ The Coshocton City Council has procured health care coverage for the clerk and deputy clerks of the Coshocton Municipal Court through the policy or plan under which group health care coverage is provided for the city’s employees.

It has been suggested that R.C. 1901.312(B) precludes the clerk and deputy clerks of a municipal court from having to contribute to the expenses associated with their health care coverage. R.C. 1901.312(B) requires the legislative authority of a municipal court to procure health care coverage for the court's clerk and deputy clerks "after consultation with the clerk and deputy clerks." Just as we do not interpret the language of R.C. 1901.111(B) requiring "consultation with the judges of the municipal court" as precluding a municipal court judge from having to contribute to the expenses associated with his health care coverage, we do not interpret the analogous language of R.C. 1901.312(B) as precluding the clerk and deputy clerks of a municipal court from having to contribute to the expenses associated with their health care coverage. R.C. 1901.312(B) requires the legislative authority to confer with the clerk and deputy clerks of the municipal court prior to procuring their health care coverage. *See generally Webster's Third New International Dictionary* 490 (unabr. ed. 1993) (defining "consultation," in part, as "the act of consulting or conferring"). It does not give the clerk or deputy clerks the authority to set the terms or conditions of their health care coverage. Accordingly, in our opinion, neither a county nor a municipal corporation is required to provide health care coverage to the clerk or deputy clerks of a municipal court at no cost to the clerk or deputy clerks. *Cf. State ex rel. Maloney v. Sherlock* at ¶52.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 1901.111, municipal court judges and their spouses and dependents shall be provided group health care coverage. Neither a county nor a municipal corporation is required to provide municipal court judges and their spouses and dependents such coverage at no cost to the judges.
2. Pursuant to R.C. 1901.312, municipal court clerks, deputy clerks, and their spouses and dependents shall be provided group health care coverage. Neither a county nor a municipal corporation is required to provide municipal court clerks, deputy clerks, or their spouses and dependents such coverage at no cost to the clerks or deputy clerks.

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