



PAUL J. GAINS

Mahoning County Prosecuting Attorney

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**OHIO ATTORNEY
GENERAL'S OFFICE**

SEP 15 2016

OPINIONS

September, 13 2016

Office of the Ohio Attorney General
Mike DeWine, Attorney General
c/o Opinion Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Dear Attorney General DeWine:

This Office represents Berlin Township, Mahoning County, Ohio along with the other 13 townships located in Mahoning County. Recently an issue arose when Berlin Township Trustee Jodi Kale and Berlin Township Fiscal Officer Dolly Bennett received a Notice of Proposed Finding for Recovery relating to Berlin Township's 2014-2015 Audit and the reimbursement of out-of-pocket premiums for their immediate dependents under R.C. 505.60(D).

The proposed finding for recovery against Trustee Kale read:

Ohio Revised Code Section 505.60 permits Townships to reimburse out of pocket premiums for a township officer or employee who is denied coverage under a township health care plan or who elects not to participate in the to participate (sic). The statute does not permit reimbursements for healthcare expenses related to family members not on the township healthcare plan. The Township reimbursed out \$1,678 for out of pocket expenses to Medicare for your spouse.

Similarly, the proposed finding for recovery against Fiscal Officer Bennett read:

Ohio Revised Code Section 505.60 permits Townships to reimburse out of pocket premiums for a township officer or employee who is denied coverage under a township health care plan or who elects not to participate

in the to participate (sic). The statute does not permit reimbursements for healthcare expenses related to family members not on the township healthcare plan. You were enrolled in the Township's health care and the Township reimbursed you \$2,973 for out of pocket expenses to Medicare for your spouse.

The Revised Code section relied on in support of each finding is R.C. 505.60(D); it provides:

(D) If any township officer or employee is denied coverage under a health care plan procured under this section or if any township officer or employee elects not to participate in the township's health care plan, the township may reimburse the officer or employee for each out-of-pocket premium attributable to the coverage provided for the officer or employee and their immediate dependents for insurance benefits described in division (A) of this section that the officer or employee otherwise obtains, but not to exceed an amount equal to the average premium paid by the township for its officers and employees under any health care plan it procures under this section.

It is the understanding of this office that the Ohio Auditor of State interprets R.C. 505.60(D) to permit reimbursement of out-of-pocket premiums for the dependents of township officers or employees *only* when the township officer or employee also personally declines to participate in the township's health plan. In other words, according to the auditors, a township employee could not elect single coverage under the township's insurance coverage and seek reimbursement for his/her spouse who opts for coverage from some other source. The township, however, reads R.C. 505.60(D) to expressly permit the reimbursement for dependents of township officers or employees who elect personal or single coverage participation in the township's health care plan, but who do not elect coverage for their dependents.

This Office agreed with the Township's reading of the statute and that any such finding for recovery against Trustee Kale and Fiscal Officer Bennett were not warranted. Attached is a copy of the legal opinion issued in conjunction with the Audit. In arriving at our opinion we relied heavily on Ohio Attorney General Opinions 2005 Op. Att'y Gen. No. 2005-038 and 2012 Op. Att'y Gen. No. 2012-027. Copies are enclosed for your convenience.

Upon review of the opinion of the local prosecutor, the State Auditor agreed to adhere to the long standing practice of deferring to the opinion of the local prosecutor and withdrew the proposed finding for recovery. In so doing, the State Auditor did not, however, change his opinion of the reading of R.C. 505.60(D). As such Berlin Township agreed to accept a reference to the practice in the Management Letter and to stop the practice until R.C. 505.60 is either amended to more expressly permit this practice or the Attorney General issues an opinion authorizing the practice.

In conjunction with reaching a resolution with the Ohio Auditor of State, the Mahoning County Prosecutor's Office advised that we would seek a legal opinion from the Ohio Attorney General. It is the understanding of this office that the Ohio Auditor of State will defer to the Attorney General's interpretation. Consequently, the practice may be reinstated if your office opines that the practice is permissible under the current language of R.C. 505.60.

To give you an appreciation of the issue consider the cost savings realized by the Township by the Trustee and Fiscal Officer electing individual coverage and declining family coverage for their spouses who were eligible for Medicare. The cost of coverage for Trustee Kale's spouse would have been \$1,571.55 per month for 2014 or \$18,858.60 and \$1,468.63 per month for 2015 or 17,623.56. Trustee Kale's actual total reimbursement for the out-of-pocket premiums for her spouse for 2014-2015 was \$1,678. Thus by Trustee Kale electing not to have her husband on the Township's insurance for 2014-2015 she saved the township and taxpayers \$34,804.16 over the two year period. ($\$36,482.16 - \$1,678 = \$34,804.16$).

Additionally, the cost of coverage for Fiscal Officer Bennett's spouse would have been \$691.79 per month for 2014 or \$8,301.48 annually for 2014 and \$646.48 per month for 2015 or \$7,757.76 annually for 2015. Fiscal Officer Bennett's actual total reimbursement for the out-of-pocket premiums for her spouse for 2014-2015 was \$2,973. Thus by Fiscal Officer Bennett electing not to have her husband on the Township's insurance for 2014-2015 she saved the township and taxpayers \$13,086.24 over the two year period. ($\$16,059.24 - \$2,973 = \$13,086.24$). Thus the overall savings to Berlin Township for 2014-2015 was nearly \$50,000. As you know, this is a material savings for any small township and such savings can be put to good use. Hence, this is an important issue not only for Berlin Township, but for all Ohio Townships.

This office has also been made aware that Berlin is not the only township in Ohio facing a proposed audit finding on this exact issue. Hence your opinion is greatly needed and appreciated.

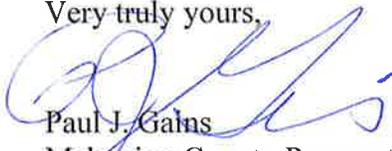
Consequently, the issues we submit for your consideration are:

1. Does the plain and ordinary meaning of the phrase "*elects not to participate*" in R.C. 505.60(D) include the ability of the officer or employee to elect any of the offered levels of participation which may *include* the officer or employee *and exclude* one or more of his/her dependents?
2. Must R.C. 505.60(D) be read to comport with its clearly intended purpose to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel?

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

If you require additional information to answer this opinion, please feel free to contact the undersigned, Chief Assistant Prosecutor Linette M. Stratford, or Assistant Prosecutor Karen Gaglione.

Very truly yours,



Paul J. Galus
Mahoning County Prosecutor

Encl.

Cc/ Berlin Township

Jodi Kale, Berlin Township Trustee

Dolly Bennett, Berlin Township Fiscal Officer

Linette M. Stratford, Mahoning County Chief Assistant Prosecutor

Karen M. Gaglione, Assistant Civil Chief Mahoning County Prosecutor



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Mahoning County Prosecuting Attorney

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August 19, 2016

Melissa J. Crocker
Assistant Legal Counsel
Auditor of State Dave Yost
88 E. Broad Street, 9th Floor
Columbus, OH 43215

RE: Notice of Proposed Finding, Berlin Township
Audit Period – Years Ended December 31, 2015 and 2014
Our File Number - 16 BER - 02

- Syllabi:
1. The plain and ordinary meaning of the phrase "*elects not to participate*" in R.C. 505.60(D) includes the ability of the officer or employee to elect any of the offered levels of participation which may *include* the officer or employee and *exclude* one or more of his/her dependents.
 2. R.C. 505.60(D) must be read to comport with its clearly intended purpose to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel.
 3. Under R.C. 505.60(D) when a township officer or employee elects to participate in the townships insurance via single coverage, the township is permitted to reimburse an officer or employee for each out-of-pocket premium attributable to the coverage provided for the officer's immediate dependents for insurance benefits that the immediate dependents otherwise obtains so long as that amount does not exceed an amount equal to the average premium paid by the township for its officers and employees under any health care plan it procures under R.C. 505.60.

Dear Ms. Crocker:

As you know, this Office represents Berlin Township, Mahoning County, Ohio. Berlin Township Trustee Jodi Kale and Berlin Township Fiscal Officer Dolly Bennett received a Notice

Melissa J. Crocker
Assistant Legal Counsel
Auditor of State Dave Yost
August 19, 2016
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of Proposed Finding on August 1, 2016 relating to reimbursement of out-of-pocket premiums for immediate dependents. It is the opinion of this Office that any such finding for recovery against Trustee Kale and Fiscal Officer Bennett is not warranted in accordance with the following legal opinion.

The proposed finding for recovery against Trustee Kale reads:

Ohio Revised Code Section 505.60 permits Townships to reimburse out of pocket premiums for a township officer or employee who is denied coverage under a township health care plan or who elects not to participate in the to participate (sic). The statute does not permit reimbursements for healthcare expenses related to family members not on the township healthcare plan. The Township reimbursed out \$1,678 for out of pocket expenses to Medicare for your spouse.

Similarly, the proposed finding for recovery against Fiscal Officer Bennett reads:

Ohio Revised Code Section 505.60 permits Townships to reimburse out of pocket premiums for a township officer or employee who is denied coverage under a township health care plan or who elects not to participate in the to participate (sic). The statute does not permit reimbursements for healthcare expenses related to family members not on the township healthcare plan. You were enrolled in the Township's health care and the Township reimbursed you \$2,973 for out of pocket expenses to Medicare for your spouse.

The Revised Code section relied on in support of each finding is R.C. 505.60(D); it provides:

(D) If any township officer or employee is denied coverage under a health care plan procured under this section or if any township officer or employee elects not to participate in the township's health care plan, the township may reimburse the officer or employee for each out-of-pocket premium attributable to the coverage provided for the officer or employee and their immediate dependents for insurance benefits described in division (A) of this section that the officer or employee otherwise obtains, but not to exceed an amount equal to the average premium paid by the township for its officers and employees under any health care plan it procures under this section.

It is the understanding of this office that the Ohio Auditor of State interprets R.C. 505.60(D) to permit reimbursement of out-of-pocket premiums for the dependents of township officers or employees *only* when the township officer or employee also personally declines to participate in the township's health plan. In other words, according to the auditors, a township employee could not elect single coverage under the township's insurance coverage and seek reimbursement for his/her spouse who opts for coverage from some other source. The township, however, reads

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Assistant Legal Counsel
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R.C. 505.60(D) to expressly permit the reimbursement for dependents of township officers or employees who elect personal or single coverage participation in township's health care plan, but who do not elect coverage for their dependents. This office agrees with the interpretation of the township for the reasons provided in this opinion.

In looking at the language of R.C. 505.60(D) it appears the issue is created by the meaning of the phrase "if any township officer or employee *elects not to participate* in the township's health care plan, the township may reimburse the officer or employee for each out-of-pocket premium attributable to the coverage provided for the officer or employee and their immediate dependents." Apparently in order to arrive at the proposed finding, the words "elects not to participate" are read as an all or nothing proposition – only if the township officer or employee declines coverage for both himself/herself *and* his/her dependents may he/she seek reimbursement for the out-of-pocket premiums incurred for coverage obtained from the alternate source. Thus the legal question is what is meant by the words "elects not to participate" in R.C. 505.60(D).

First, there is no question that the officer or employee of the township acts as the gatekeeper of whether and what health insurance coverage is elected for both themselves and their dependents. Most plans offer various elections including: single, single plus a spouse, single plus a child, or family coverage. As such, the officer or employee of a township is the only person who can elect coverage for his/her spouse or children. And if the officer or employee elects not to provide coverage for his/her dependents there is no recourse for their dependents. For example, the spouse of an officer or employee could not go to the township and force an election for family coverage if the officer employee only elects single coverage. Additionally, any reimbursement for out-of-pocket premiums for dependents must be paid to the township officer or employee. *See* 2005 Op. Att'y Gen. No. 2005-038, syllabus 3. Thus it is the official opinion of this office that the plain and ordinary meaning of the phrase "*elects not to participate*" in R.C. 505.60(D) includes the ability of the officer or employee to elect any of the offered levels of participation which may *include* the officer or employee *and exclude* one or more of his/her dependents.

Secondly, the Berlin Township's interpretation of R.C. 505.60(D) is consistent with that of the Ohio Attorney General's previous opinions. In 2005 Op. Att'y Gen. No. 2005-038 the Attorney General explained the purpose behind the reimbursement provisions of R.C. 505.60 and 505.601. The question was under what circumstances a board of township trustees could reimburse its officer or employees for the out-of-pocket premiums for health insurance coverage obtained through the employer of the spouse of the township officer or employee. Specifically at questioned was the meaning of the language in R.C. 505.60(C) [now (D)] that spoke of the ability to reimburse for the out-of-pocket expenses the township officer or employee "*incurs*". The issue was since it was the spouse who held the coverage technically it was the spouse who "*incurred*" the liability to pay the premium – not the officer or employee. Thus to read the statute literally would deny any ability to reimburse the out-of-pocket expenses for officers or employees under R.C. 505.60(D). The Attorney General rejected this literal reading and opined:

We believe such a literal reading of these statutory provisions, however, must be rejected.

Rather, as stated in *Lake County Nat'l Bank v. Kosydar*, 36 Ohio St. 2d 189, 192, 305 N.E.2d 799 (1973), if "adherence to the plain and ordinary meaning of the word [in a statute] would defeat the legislative purpose in the enactment of the statute,... 'the strict letter of an act must * * * yield to its evident spirit and purpose * * *.'" *Fleischmann Construction Co. v. United States* (1926), 270 U.S. 349, 360." By authorizing townships to reimburse their officers and employees for out-of-pocket expenses for health care coverage obtained other than through the township, the General Assembly clearly intended to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel. *See generally Miller v. Fairley*, 141 Ohio St. 327, 48 N.E.2d 217 (1943) (syllabus, paragraph two) ("[s]tatutes are to be read in the light of attendant circumstances and conditions, and are to be construed as they were intended to be understood, when they were passed"). As a general rule, coverage of a couple or family under a single health care plan is more economical than covering each individual separately. Thus, if a township officer or employee were eligible for health care coverage through the employer of the spouse of the officer or employee, the township's payment of the additional cost of adding the township officer or employee to the spouse's existing coverage will generally result in a much lower cost for health care coverage to the township and to the officer or employee.

In addition, we must assume that the General Assembly was aware of the common practice of both public and private employers, when providing health care coverage for an employee, to offer coverage to the employee's spouse and family as well. Had the General Assembly intended not to include reimbursement to a township officer or employee who is eligible to receive health care coverage under a spouse's available coverage, it could easily have added to the other restrictions on reimbursement in R.C. 505.60 and R.C. 505.601 language that would expressly exclude reimbursement for health care coverage provided through the employer of the spouse of the township officer or employee. That it did not do. We assume, therefore, that the General Assembly intended that, should a township officer or employee obtain health care coverage through the employer of the spouse of that officer or employee, as is often the case, R.C. 505.60 and R.C. 505.601 authorize the board of township trustees to reimburse the officer or employee for the out-of-pocket premium attributable to the coverage provided for that officer or employee.

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Assistant Legal Counsel
Auditor of State Dave Yost
August 19, 2016
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Thus according to the Ohio Attorney General, R.C. 505.60(D) must be read to comport with its “clearly intended” purpose “to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel.” *Id.* In this instance, however, the State Auditor proposes a literal reading that would require an all or nothing proposition. But such an interpretation of R.C. 505.60(D) defeats the intent of the statute. Forced into an all or nothing choice the officer or employee is going to choose all and that most certainly will increase the cost to the township and taxpayers.

Thirdly, the interpretation of the statute adopted by Berlin Township is also consistent with the State Legislature’s response to the Ohio Attorney General’s 2012 call to remedy the inequity of not permitting reimbursements for the dependents of township officers or employees.

As you are aware, the ability to seek reimbursement for the out-of-pocket premiums for dependents under R.C. 505.60(D) was addressed by the Ohio Attorney General 2012 Op. Att’y Gen. No. 2012-027. In such opinion the Attorney General considered the then language of R.C. 505.60(D) which did not include the words “*and their immediate dependents.*” As such the Attorney General opined:

When a township officer or employee is not covered by a township health care plan, either because the person is denied coverage or the person elects not to participate in the township’s health care plan, R.C. 505.60(D) authorizes the township to reimburse the officer or employee for coverage otherwise obtained. However, the General Assembly has not included the phrase “and their immediate dependents” in division (D) of R.C. 505.60. Therefore, there is no authorization for the board of township trustees to reimburse an officer or employee for health care coverage that is otherwise obtained for the officer or employee’s immediate dependents. *See* 1990 Op. Att’y Gen. No. 90-064, at 2-271 (“[c]oncerning the authority of the board of township trustees under R.C. 505.60, prior opinions have consistently concluded that R.C. 505.60 allows the board to provide insurance for its officers and employees only in the manner specified in the statute.... *See, e.g.,* 1989 Op. Att’y Gen. No. 89-009; 1984 Op. Att’y Gen. No. 84-086; 1982 Op. Att’y Gen. No. 82-076”).

We thus conclude that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee’s immediate dependents that the officer or employee obtains other than from the township. We understand that this conclusion may result in a certain inequity in some situations. For example, when a township, acting pursuant to R.C. 505.60(A), procures and pays for the health care insurance coverage of its officers, employees, and their dependents, and a township officer or employee either is denied coverage or elects not to participate in the township’s health care plan, that officer or employee may be reimbursed only for the coverage he

otherwise obtains for himself and not for coverage he obtains for his dependents.

Had the General Assembly intended to include immediate dependents in the authorization granted by R.C. 505.60(D), it could have done so by inserting the same phrase—“and their immediate dependents”—used in R.C. 505.60(A), R.C. 505.60(B), and R.C. 505.601. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, “it would not have been difficult to find language which would express that purpose,” having used that language in other matters); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

*4 To the extent that a different result may be desirable, the remedy lies with the General Assembly. 2004 Op. Att’y Gen. No. 2004-035, at 2-321; 1983 Op. Att’y Gen. No. 83-034, at 2-131. *See also Bd. of Educ. v. Fulton County Budget Comm’n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975) (“[t]he remedy desired by appellants ... must be obtained from the source of their problem—the General Assembly” (footnote omitted)); *State ex rel. Nimberger v. Bushnell*, 95 Ohio St. 203, 116 N.E. 464 (1917) (syllabus, paragraph 4) (“[w]hen the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment”).

As such, the Attorney General for all intents and purposes opined that the inability to seek reimbursement for the out-of-pocket premiums of dependents was inequitable – but he placed the burden back on the legislature to correct this problem. In response, the legislature added the words “*and their immediate dependents*” to R.C. 505.60(D), thereby expressly extending the reimbursement for out-of-pocket premiums for the dependents of township officers or employees. Sub. H.B. 347, 129th Gen. A. (2012) (eff. Mar. 22, 2013). In fact, according to the preface to House Bill 347, the General Assembly’s purpose behind enacting the amendment was to, “authorize townships to reimburse officers and employees for out-of-pocket insurance premiums attributable to coverage provided for their immediate dependents.” 2012 Ohio Laws File 177 (Sub. H.B. 347).

Thus, there can be no dispute that R.C. 505.60 was amended in 2012 to allow for reimbursement for immediate dependents of township officers and employees. The Auditor of State takes the position that reimbursement can only be made when both the township officer or employee *and* their immediate dependents elect not to participate in the township’s health care plan. But, again, we must look at the “evident spirit and purpose” of the statute which is to reimburse for out-of-pocket premiums for both officers and employees and their immediate dependents.

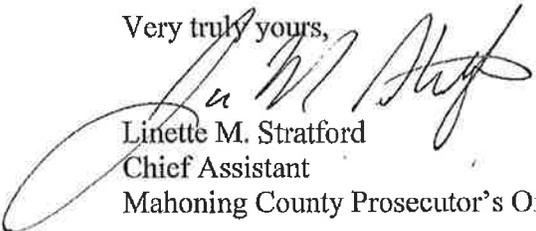
Melissa J. Crocker
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As set forth above, R.C. 505.60 provides that if any township officer or employee elects not to participate in the township's health care plan, the township may reimburse the officer or employee for each out-of-pocket premium attributable to the coverage provided for the officer or employee and their immediate dependents. When the township offers coverage to its officers and employees it is permitted to offer coverage in many different forms (i.e. single, family, etc.). The officer or employee may elect not to participate in the township's coverage at all and to be reimbursed for herself and her immediate dependents. That same township officer may instead elect not to participate in the family plan but instead may elect for single coverage. In such an instance the reimbursement for immediate dependents would still be available. The officer does not have to take all of the coverage offered to him or her. This often – if not always – results in substantial saving for a township which is precisely the intent recognized the Attorney General in both Opinion Nos. 2005-038 and 2012-027. The law must be read to comport with its application and intent. Plainly the intent of providing the exception that permits reimbursement of out-of-pocket premiums is to lower the cost of providing health insurance. And this intent became increasingly important with the imposition of the Affordable Care Act which requires all citizens to carry health insurance.

Therefore, it is the official opinion of this Office that under R.C. 505.60(D) when a township officer or employee elects to participate in the townships insurance via single coverage, the township is permitted to reimburse an officer or employee for each out-of-pocket premium attributable to the coverage provided for the officer's immediate dependents for insurance benefits that the immediate dependents otherwise obtains so long as that amount does not exceed an amount equal to the average premium paid by the township for its officers and employees under any health care plan it procures under R.C. 505.60.

Based on the foregoing, we respectfully request that the Ohio Auditor of State remove the proposed findings for recovery from the 2014-2015 Audit of Berlin Township. Of course, if you have any questions or would like to further discuss this opinion please contact the undersigned or Assistant Prosecutor Karen Gaglione. Otherwise, we look forward to your decision.

Very truly yours,



Linette M. Stratford
Chief Assistant

Mahoning County Prosecutor's Office

Cc: Andrea VanScoc, Staff Attorney, Perry & Associates
Joey S. Jones, CPA Chief Auditor-East Region, Ohio Auditor of State
Jodi Kale, Trustee Berlin Township
Dolly Bennet, Fiscal Officer Berlin Township
Karen Gaglione, Asst. Chief of the Civil Division, Mahoning County Prosecutor's Office

October 28, 2005

The Honorable Roger D. Nagel
Fulton County Prosecuting Attorney
123 Courthouse Plaza
Wauseon, Ohio 43567

SYLLABUS:

2005-038

1. Pursuant to R.C. 505.60(C), a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township's health care plan. (1992 Op. Att'y Gen. No. 92-068 (syllabus, paragraph four) and 1990 Op. Att'y Gen. No. 90-053, modified due to statutory change.)
2. Pursuant to R.C. 505.601, if a board of township trustees chooses not to provide health care coverage to its officers and employees in accordance with R.C. 505.60, the board may reimburse an officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of spouse of the officer or employee, but for only those insurance policies described in R.C. 505.60(A), and only if the township adopts a resolution in accordance with R.C. 505.601(A)-(C) that authorizes such reimbursement.
3. Neither R.C. 505.60(C) nor R.C. 505.601 authorizes a township to pay directly to the employer of the spouse of a township officer or employee the cost of health care coverage attributable to the officer or employee under a health care plan provided to the spouse of the township officer or employee by the spouse's employer.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

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October 28, 2005

OPINION NO. 2005-038

The Honorable Roger D. Nagel
Fulton County Prosecuting Attorney
123 Courthouse Plaza
Wauseon, Ohio 43567

Dear Prosecutor Nagel:

You have requested an opinion concerning the authority of a township to reimburse a township officer or employee for the cost of health care coverage obtained through the employer of the spouse of the officer or employee. You specifically ask:

1. Under what circumstances, if any, may a board of township trustees reimburse its employees or officers for health insurance coverage for township employees or officers obtained through the employer of the spouse of the township officer or employee?
2. Can a board of township trustees pay directly to the employer of the spouse of a township officer or employee that portion of the cost of health insurance premium the employer attributes to the coverage provided the township's officer or employee?

The reimbursement of township officers and employees for health insurance coverage obtained other than through the township is addressed in two statutes, R.C. 505.60 and R.C. 505.601. Let us first examine R.C. 505.60, which states, in pertinent part:

(A) As provided in this section and [R.C. 505.601], the board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees. The board of township trustees of any township may negotiate and contract for the purchase

of a policy of long-term care insurance for township officers and employees pursuant to [R.C. 124.841].

(B) If the board procures any insurance policies under this section, the board shall provide uniform coverage under these policies for township officers and full-time township employees and their immediate dependents, and may provide coverage under these policies for part-time township employees and their immediate dependents, from the funds or budgets from which the officers or employees are compensated for services, such policies to be issued by an insurance company duly authorized to do business in this state....

The board may also contract for group health care services with health insuring corporations holding certificates of authority under [R.C. Chapter 1751] for township officers and employees....

....
(C) *If any township officer or employee is denied coverage under a health care plan procured under division (B) of this section or if any township officer or employee elects not to participate in the township's health care plan, the township may reimburse the officer or employee for each out-of-pocket premium that the officer or employee incurs for insurance policies described in division (A) of this section that the officer or employee otherwise obtains, but not to exceed an amount equal to the average premium paid by the township for its officers and employees under policies it procures under division (B) of this section. (Emphasis added.)*

Thus, R.C. 505.60(C) authorizes reimbursement of a township officer or employee for out-of-pocket premiums for health care coverage the officer or employee otherwise obtains if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township's health care plan.

R.C. 505.601 makes similar provision for the reimbursement of a township officer or employee if the township does not procure health care coverage for township personnel under R.C. 505.60,¹ as follows:

¹ Before the addition of division (C) to R.C. 505.60 and the enactment of R.C. 505.601 in 1999-2000 Ohio Laws, Part I, 1213 (Am. Sub. H.B. 187, eff. Sept. 20, 1999), 1992 Op. Att'y Gen. No. 92-068 concluded in paragraph four of the syllabus that, "[a] board of township trustees has no authority to procure hospital insurance for a township trustee and the trustee's dependents by paying for coverage under a plan offered by the trustee's private employer." Similarly, 1990 Op. Att'y Gen. No. 90-053 concluded in the syllabus that, "R.C. 505.60 does not empower a board of township trustees to reimburse a township officer, who was denied coverage by the township's regular health insurance carrier, the cost of the trustee's independently obtaining health insurance coverage through her outside employment." Because of the reimbursement

If a board of township trustees does not procure an insurance policy or group health care services as provided in section 505.60 of the Revised Code, the board of township trustees may reimburse any township officer or employee for each out-of-pocket premium that the officer or employee incurs for insurance policies described in division (A) of section 505.60 of the Revised Code that the officer or employee otherwise obtains, if all of the following conditions are met:

(A) The board of township trustees adopts a resolution that states that the township has chosen not to procure a health care plan under section 505.60 of the Revised Code and has chosen instead to reimburse its officers and employees for each out-of-pocket premium that they incur for insurance policies described in division (A) of section 505.60 of the Revised Code that they otherwise obtain.

(B) That resolution provides for a uniform maximum monthly or yearly payment amount for each officer or employee, beyond which the township will not reimburse the officer or employee.

(C) That resolution states the specific benefits listed in division (A) of section 505.60 of the Revised Code for which the township will reimburse all officers and employees of the township. The township may not reimburse officers and employees for benefits other than those listed in division (A) of section 505.60 of the Revised Code. (Emphasis added.)

Both R.C. 505.60(C) and R.C. 505.601 state that a township may “reimburse” a township officer or employee, up to a fixed amount,² for “each out-of-pocket premium that the officer or employee incurs for insurance policies described in [R.C. 505.60(A)] that the officer or employee otherwise obtains.”³

provisions now contained in R.C. 505.60(C) and R.C. 505.601, however, we must modify 1992 Op. Att’y Gen. No. 92-068 (syllabus, paragraph four) and 1990 Op. Att’y Gen. No. 90-053 to conform to the reimbursement authority now conferred upon boards of township trustees by R.C. 505.60(C) and R.C. 505.601.

² R.C. 505.60(C) limits the reimbursement to no more than “an amount equal to the average premium paid by the township for its officers and employees under policies it procures under [R.C. 505.60(B)].” R.C. 505.601(B) requires a township that establishes a reimbursement policy in lieu of providing health care coverage under R.C. 505.60 to include in the resolution establishing the reimbursement policy “a uniform maximum monthly or yearly payment amount for each officer or employee, beyond which the township will not reimburse the officer or employee.”

³ Because the reimbursement powers conferred upon a board of township trustees by R.C. 505.60 and R.C. 505.601 differ, a board of township trustees must indicate in the adopting resolution under which of the two statutes it intends to proceed, and thereafter adhere to the specific terms and limitations established by that statute. We also note that the reimbursement

Your first question concerns the authority of a township to reimburse a township officer or employee for health care coverage afforded such officer or employee through insurance provided by the employer of the spouse of the officer or employee. Assuming that there is an additional cost, *i.e.*, out-of-pocket expense, to the spouse of the officer or employee for the health care coverage provided for the township officer or employee through the employer of the spouse, we believe that both R.C. 505.60(C) and R.C. 505.601 authorize a township to reimburse the township officer or employee for such expense under the conditions outlined in each statute. *See generally* notes two and three, *supra*.

Both R.C. 505.60(C) and R.C. 505.601 describe the amount for which a township may reimburse an officer or employee as “each out-of-pocket premium that the officer or employee incurs for insurance policies described in [R.C. 505.60(A)] that the officer or employee otherwise obtains.” A literal reading of this language limits the out-of-pocket premiums for which a township may reimburse an office or employee to those “the officer or employee incurs” for insurance policies described in R.C. 505.60(A) that the officer or employee obtains other than through the township. As defined in *Webster’s Third New International Dictionary Unabridged* 1146 (1993), the verb “incur” means, in part, to “become liable or subject to.” The subject of the verb “incurs,” as used in R.C. 505.60 and R.C. 505.601, is township “officer or employee.” Thus, a literal reading of R.C. 505.60 and R.C. 505.601 would authorize a township to reimburse a township officer or employee for only those out-of-pocket insurance premiums for which the officer or employee, rather than the spouse of the officer or employee, becomes liable. We believe such a literal reading of these statutory provisions, however, must be rejected.

Rather, as stated in *Lake County Nat’l Bank v. Kosydar*, 36 Ohio St. 2d 189, 192, 305 N.E.2d 799 (1973), if “adherence to the plain and ordinary meaning of the word [in a statute] would defeat the legislative purpose in the enactment of the statute, ... ‘the strict letter of an act must * * * yield to its evident spirit and purpose * * *.’ *Fleischmann Construction Co. v. United States* (1926), 270 U.S. 349, 360.” By authorizing townships to reimburse their officers and employees for out-of-pocket expenses for health care coverage obtained other than through the township, the General Assembly clearly intended to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel. *See generally Miller v. Fairley*, 141 Ohio St. 327, 48 N.E.2d 217 (1943) (syllabus, paragraph two) (“[s]tatutes are to be read in the light of attendant

provisions of R.C. 505.60 and R.C. 505.601 are mutually exclusive. If a township chooses to make health care coverage available to its officers and employees under R.C. 505.60, the township may offer them reimbursement only as specified in R.C. 505.60(C). In contrast, R.C. 505.601 authorizes a township to offer its officers and employees reimbursement under the terms set forth therein only if the township has elected *not* to provide health care coverage under R.C. 505.60. Accordingly, a township that elects to provide health care coverage under R.C. 505.60 may not offer reimbursement under the terms described in R.C. 505.601, and a township that chooses not to offer health care coverage under R.C. 505.60 may not offer reimbursement under the terms described in R.C. 505.60.

circumstances and conditions, and are to be construed as they were intended to be understood, when they were passed”). As a general rule, coverage of a couple or family under a single health care plan is more economical than covering each individual separately. Thus, if a township officer or employee were eligible for health care coverage through the employer of the spouse of the officer or employee, the township’s payment of the additional cost of adding the township officer or employee to the spouse’s existing coverage will generally result in a much lower cost for health care coverage to the township and to the officer or employee.

In addition, we must assume that the General Assembly was aware of the common practice of both public and private employers, when providing health care coverage for an employee, to offer coverage to the employee’s spouse and family as well. Had the General Assembly intended not to include reimbursement to a township officer or employee who is eligible to receive health care coverage under a spouse’s available coverage, it could easily have added to the other restrictions on reimbursement in R.C. 505.60 and R.C. 505.601 language that would expressly exclude reimbursement for health care coverage provided through the employer of the spouse of the township officer or employee. That it did not do. We assume, therefore, that the General Assembly intended that, should a township officer or employee obtain health care coverage through the employer of the spouse of that officer or employee, as is often the case, R.C. 505.60 and R.C. 505.601 authorize the board of township trustees to reimburse the officer or employee for the out-of-pocket premium attributable to the coverage provided for that officer or employee.

In answer to your first question, we conclude that, pursuant to R.C. 505.60(C), a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township’s health care plan. Pursuant to R.C. 505.601, if a board of township trustees chooses not to provide health care coverage to its officers and employees in accordance with R.C. 505.60, the board may reimburse an officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of the spouse of the officer or employee, but for only those insurance policies described in R.C. 505.60(A), and only if the township adopts a resolution in accordance with R.C. 505.601(A)-(C) that authorizes such reimbursement.

Your second question asks whether a board of township trustees may pay directly to the employer of the spouse of a township officer or employee that portion of the cost of health insurance premium the employer attributes to the coverage provided the township’s officer or employee. Both R.C. 505.60 and R.C. 505.601 use the word “reimburse” to describe the manner in which a board of township trustees may pay a township officer or employee for out-of-pocket premiums for health care coverage obtained by the officer or employee. As defined in *Webster’s New World Dictionary* (2d college ed. 1978) 1197, “reimburse” means “1. to pay back (money spent) 2. to repay or compensate (a person) for expenses, damages, losses, etc.” The word

“reimburse” thus suggests that the reimbursing party makes payment for something only after the party to be reimbursed has paid out a sum. Accordingly, pursuant to R.C. 505.60(C) and R.C. 505.601, a township may pay for health care coverage provided for a township officer or employee through the employer of the spouse of the officer or employee only by making payment to the officer or employee after the cost of coverage attributable to the officer or employee has been paid. *See generally Akron Transportation Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493 (1951) (“when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner”). In answer to your second question, we conclude, therefore, that neither R.C. 505.60(C) nor R.C. 505.601 authorizes a township to pay directly to the employer of the spouse of a township officer or employee the cost of health care coverage attributable to the officer or employee under a health care plan provided to the spouse of the township officer or employee by the spouse’s employer.

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

1. Pursuant to R.C. 505.60(C), a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60(B), or if the officer or employee elects not to participate in the township’s health care plan. (1992 Op. Att’y Gen. No. 92-068 (syllabus, paragraph four) and 1990 Op. Att’y Gen. No. 90-053, modified due to statutory change.)
2. Pursuant to R.C. 505.601, if a board of township trustees chooses not to provide health care coverage to its officers and employees in accordance with R.C. 505.60, the board may reimburse an officer or employee for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of the spouse of the officer or employee, but for only those insurance policies described in R.C. 505.60(A), and only if the township adopts a resolution in accordance with R.C. 505.601(A)-(C) that authorizes such reimbursement.

3. Neither R.C. 505.60(C) nor R.C. 505.601 authorizes a township to pay directly to the employer of the spouse of a township officer or employee the cost of health care coverage attributable to the officer or employee under a health care plan provided to the spouse of the township officer or employee by the spouse's employer.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General

September 7, 2012

The Honorable Joseph R. Burkard
Paulding County Prosecuting Attorney
112 ½ Water Street
Paulding, Ohio 45879

SYLLABUS:

2012-027

R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.



MIKE DEWINE

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September 7, 2012

OPINION NO. 2012-027

The Honorable Joseph R. Burkard
Paulding County Prosecuting Attorney
112 ½ Water Street
Paulding, Ohio 45879

Dear Prosecutor Burkard:

You have requested an opinion whether R.C. 505.60(D) permits a township to reimburse a township officer or employee for an immediate dependent's health care plan. For the reasons that follow, it is our opinion that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.¹

We begin with the principle that, in order to perform the duties imposed upon them, township trustees may exercise only those powers conferred by statute or implied by those expressly granted.² *In re Vill. of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994) (recognizing the "well-settled principle that township trustees can exercise only those powers granted by the General Assembly"); *Trs. of New London Twp. v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Trs. of*

¹ This opinion concerns the operation of R.C. 505.60. R.C. 505.60 authorizes a board of township trustees to procure and pay for health care insurance coverage for its officers and employees. If a township chooses not to procure health care insurance coverage pursuant to R.C. 505.60, the township may, pursuant to R.C. 505.601, elect to reimburse its officers and employees for health care insurance coverage they otherwise obtain for themselves and their immediate dependents. R.C. 505.601.

R.C. 505.60 operates separately from R.C. 505.601, and the two statutes are mutually exclusive. 2005 Op. Att'y Gen. No. 2005-038, at 2-400 n.3. Thus, because Paulding Township operates under R.C. 505.60 by providing health care coverage options to its officers and employees, the township may not operate pursuant to R.C. 505.601.

² R.C. Chapter 504 authorizes townships to adopt a limited home rule government. There are no townships in Paulding County that have adopted the limited home rule government, and thus this opinion does not consider the powers of the elected officers of townships that have adopted a limited home rule government. *See, e.g.*, R.C. 504.04; 2007 Op. Att'y Gen. No. 2007-036, at 2-373 nn.9-10.

Brown Twp., 13 Ohio St. 311, 324-25 (1862); *see also State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916) (“[t]he [statutory] authority [of a statutorily created board] to act in financial transactions must be clear and distinctly granted”); 1988 Op. Att’y Gen. No. 88-088 (syllabus, paragraph 4) (“[a] board of township trustees may disburse township funds only by clear authority of law”). In sum, township officers may not exercise a power or undertake an activity, particularly with regard to township finances, absent express or implied statutory authority to do so. 2009 Op. Att’y Gen. No. 2009-034, at 2-237.

A board of township trustees is authorized to provide health care insurance coverage to its officers and employees and their immediate dependents pursuant to R.C. 505.60:

(A) As provided in this section and [R.C. 505.601], the board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees....

If the board procures any insurance policies under this section, the board shall provide uniform coverage under these policies *for township officers and full-time township employees and their immediate dependents*, and may provide coverage under these policies *for part-time township employees and their immediate dependents*, from the funds or budgets from which the officers or employees are compensated for services, such policies to be issued by an insurance company duly authorized to do business in this state.

(B) The board may also provide coverage for any or all of the benefits described in division (A) of this section by entering into a contract for group health care services with health insuring corporations holding certificates of authority under [R.C. Chapter 1751] *for township officers and employees and their immediate dependents*. If the board so contracts, it shall provide uniform coverage under any such contracts *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, and may provide coverage under such contracts *for part-time township employees and their immediate dependents*, from the funds or budgets from which the officers or employees are compensated for services....

....

(D) If any township officer or employee is denied coverage under a health care plan procured under this section or if any township officer or employee elects not to participate in the township’s health care plan, *the township may reimburse the officer or employee* for each out-of-pocket premium *attributable to the coverage provided for the officer or employee* for insurance benefits described in division (A) of this section that the *officer or employee* otherwise obtains, but not to exceed an amount equal to the average premium paid by the township *for its officers and*

employees under any health care plan it procures under this section. (Emphasis added.)

As noted in your letter and italicized above, divisions (A) and (B) of R.C. 505.60 explicitly include the phrase “and their immediate dependents” in reference to township officers and employees. The inclusion of that phrase requires uniform coverage for immediate dependents when health care insurance coverage for officers and employees is provided.

When a township officer or employee is not covered by a township health care plan, either because the person is denied coverage or the person elects not to participate in the township’s health care plan, R.C. 505.60(D) authorizes the township to reimburse the officer or employee for coverage otherwise obtained. However, the General Assembly has not included the phrase “and their immediate dependents” in division (D) of R.C. 505.60. Therefore, there is no authorization for the board of township trustees to reimburse an officer or employee for health care coverage that is otherwise obtained for the officer or employee’s immediate dependents. *See* 1990 Op. Att’y Gen. No. 90-064, at 2-271 (“[c]oncerning the authority of the board of township trustees under R.C. 505.60, prior opinions have consistently concluded that R.C. 505.60 allows the board to provide insurance for its officers and employees only in the manner specified in the statute.... *See, e.g.,* 1989 Op. Att’y Gen. No. 89-009; 1984 Op. Att’y Gen. No. 84-086; 1982 Op. Att’y Gen. No. 82-076”).

We thus conclude that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee’s immediate dependents that the officer or employee obtains other than from the township. We understand that this conclusion may result in a certain inequity in some situations. For example, when a township, acting pursuant to R.C. 505.60(A), procures and pays for the health care insurance coverage of its officers, employees, and their dependents, and a township officer or employee either is denied coverage or elects not to participate in the township’s health care plan, that officer or employee may be reimbursed only for the coverage he otherwise obtains for himself and not for coverage he obtains for his dependents.

The Attorney General considered a prior version of R.C. 505.60 in 2005 Op. Att’y Gen. No. 2005-038. In that opinion, the Attorney General acknowledged that it is the “common practice of both public and private employers, when providing health care coverage for an employee, to offer coverage to the employee’s spouse and family as well,” and “[b]y authorizing townships to reimburse their officers and employees for out-of-pocket expenses for health care coverage obtained other than through the township, the General Assembly clearly intended to increase the options available to township officers and employees to obtain health care coverage in the most cost-effective manner to both the townships and township personnel” because “[a]s a general rule, coverage of a couple or family under a single health care plan is more economical than covering each individual separately.” 2005 Op. Att’y Gen. No. 2005-038, at 2-401. Notwithstanding these laudable policy considerations, 2005 Op. Att’y Gen. No. 2005-038 (syllabus, paragraph 1) concluded that

a board of township trustees may reimburse a township officer or employee for the out-of-pocket premium *attributable to that officer or employee* for health care

coverage under insurance policies described in R.C. 505.60(A) provided through the employer of the spouse of the officer or employee if the officer or employee is denied health care coverage under a policy procured by the township under R.C. 505.60[(A)], or if the officer or employee elects not to participate in the township's health care plan. (Emphasis added.)

We again are reticent to find authority for the township trustees to act where no authority is expressly granted by the statute. The authority for a board of township trustees to act—especially in matters concerning township finances—must be clearly granted. Here that clear grant of authority does not exist. Rather, the General Assembly plainly has included “immediate dependents” elsewhere in the same section as well as in the comparable provisions of R.C. 505.601, but it has not included “immediate dependents” in the language of R.C. 505.60(D) authorizing reimbursement to a township officer or employee.

Had the General Assembly intended to include immediate dependents in the authorization granted by R.C. 505.60(D), it could have done so by inserting the same phrase—“and their immediate dependents”—used in R.C. 505.60(A), R.C. 505.60(B), and R.C. 505.601. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, “it would not have been difficult to find language which would express that purpose,” having used that language in other matters); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

To the extent that a different result may be desirable, the remedy lies with the General Assembly. 2004 Op. Att’y Gen. No. 2004-035, at 2-321; 1983 Op. Att’y Gen. No. 83-034, at 2-131. *See also Bd. of Educ. v. Fulton County Budget Comm’n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975) (“[t]he remedy desired by appellants ... must be obtained from the source of their problem—the General Assembly” (footnote omitted)); *State ex rel. Nimberger v. Bushnell*, 95 Ohio St. 203, 116 N.E. 464 (1917) (syllabus, paragraph 4) (“[w]hen the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment”).

On the basis of the foregoing, it is my opinion, and you are hereby advised that R.C. 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General