

June 13, 2013

The Honorable Kirk E. Yosick
Williams County Prosecuting Attorney
216 S. Lynn St.
Bryan, Ohio 43506

SYLLABUS:

2013-021

The cost of health care insurance provided by a board of county commissioners under R.C. 305.171(A) for the employees of a county veterans service commission is a component of the employees' compensation. Pursuant to R.C. 305.171(A), R.C. 5901.06, and R.C. 5901.07, when the board of county commissioners has appropriated to the veterans service commission the full five-tenths of a mill of revenue generated by the tax levy imposed under R.C. 5901.11, the cost of health care insurance premiums incurred by a board of county commissioners for the employees of a veterans service commission shall be paid from revenues generated by the five-tenths of a mill tax levy imposed under R.C. 5901.11.



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OPINION NO. 2013-021

The Honorable Kirk E. Yosick
Williams County Prosecuting Attorney
216 S. Lynn St.
Bryan, Ohio 43506

Dear Prosecutor Yosick:

We have received your request for an opinion whether the purchase of health care insurance under R.C. 305.171(A) for veterans service commission (VSC)¹ employees must be paid from the five-tenths of a mill tax levy imposed pursuant to R.C. 5901.11.² According to your letter, it has been the practice of the board of county commissioners to provide health care insurance for employees of the VSC, *see* R.C. 305.171, from a budget line item in the general fund of the county, but not as part of the five-tenths of a mill appropriation to the VSC set forth in R.C. 5901.11. When this practice

¹ The county veterans service commission (VSC) was formerly known as the soldiers' relief commission. *See* 1987-1988 Ohio Laws, Part III, 4685, 4686 (Am. Sub. H.B. 626, eff. Sept. 14, 1988). This opinion references many authorities referring to a VSC by its former name.

² You have specifically limited your question to an opinion regarding premiums for health care insurance provided for employees of the VSC, and not the commission members, who are public officers. *See* 2001 Op. Att'y Gen. No. 2001-038 (syllabus paragraph 1) (“[m]embers of a county [VSC] are ‘officers’ for purposes of Ohio Const. art. II, § 20”); 2001 Op. Att'y Gen. No. 2001-004 (syllabus paragraph 1) (“[m]embers of a county [VSC] are ‘officers’ for purposes of Ohio Const. art. II, § 38”); 1962 Op. Att'y Gen. No. 3067, p. 441, at 444 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment) (a member of the VSC is a public officer within the general rule); *see also* R.C. 5901.02 (VSC members are not permitted to be employees of the commission). Thus, this opinion does not address how premiums for health care insurance should be paid for members of the commission and addresses only how premiums for health care insurance should be paid for commission employees specifically referenced in R.C. 5901.06 and R.C. 5901.07. *See* 1962 Op. Att'y Gen. No. 3067, p. 441, at p. 445 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008 on the basis of statutory amendment) (“compensation and expenses [for VSC members] should be paid out of funds available pursuant to the tax levied by [R.C. 5901.11]”).

commenced, the VSC usually did not spend the full five-tenths of a mill that had been appropriated to it. Later, the VSC began to spend the full five-tenths of a mill.

The board of county commissioners would like to establish a line item for health care insurance it purchases for employees of the VSC within the five-tenths of a mill appropriation for the VSC set forth in R.C. 5901.11, instead of the previous line item for which general fund moneys were used. Before determining whether the board of county commissioners is able to do this, it is helpful to give a brief overview of the VSC and the law governing county-provided health care insurance.

The Veterans Service Commission

A VSC is established in each county and is composed of five members who are residents of the county and are honorably discharged veterans. R.C. 5901.02; 2012 Op. Att’y Gen. No. 2012-019, at 2-165. A VSC provides various services to veterans and their families, including financial assistance, R.C. 5901.08-.09; R.C. 5901.14-.15, establishing regularly scheduled transportation for veterans to and from veterans administration medical centers, R.C. 5901.03(H), participating in appropriate memorial and commemorative activities to help promote patriotism and veterans services, R.C. 5901.03(I), and purchasing burial plots for indigent veterans, R.C. 5901.16. *See* 2012 Op. Att’y Gen. No. 2012-035, at 2-309; 2012 Op. Att’y Gen. No. 2012-019, at 2-165. The commission is also responsible for, among other things, employing necessary staff and fixing their compensation, establishing policies and procedures for the administration of the commission and veterans service office, and causing the budgets of the VSC and veterans service office to be presented to the board of county commissioners for approval. R.C. 5901.03. A VSC is a part of the county government. 2012 Op. Att’y Gen. No. 2012-035, at 2-309.

The VSC may employ an executive director and investigators and clerks as are necessary to perform the duties of the commission. R.C. 5901.06. “The compensation of such investigators and clerks shall be established by the commission, and shall be paid from the county allotment of veterans service funds.” R.C. 5901.06. The VSC also shall employ one or more county veterans service officers, one of whom may act as executive director. R.C. 5901.07. These service officers shall advise and assist present and former members of the armed forces of the United States and their family members in presenting claims or obtaining rights or benefits under any law of the United States or Ohio. *Id.* The commission also shall employ the necessary clerks, stenographers, and other personnel to assist the service officers in the performance of duties and fix their compensation. *Id.* “The compensation of each service officer and of any employee and any expenses incurred under this section shall be paid out of funds appropriated to the commission, as provided in [R.C. 5901.11].” *Id.*³

³ The VSC also may appoint a county veterans service committee. R.C. 5901.05. There is no authority in the Revised Code, however, for this committee to receive compensation. *See* 1931 Op. Att’y Gen. No. 3326, vol. II, p. 818 (syllabus); 1900 Annual Report of the Attorney General, p. 19, at 20 (January 26, 1900).

R.C. 5901.11 addresses the manner by which the operation and responsibilities of a VSC are to be funded:

On or before the last Monday in May in each year, the [VSC] shall meet and determine in an itemized manner the probable amount necessary for the aid and financial assistance of persons entitled to such aid and assistance and for the operation of the veterans service office for the ensuing year. After determining the probable amount necessary for such purposes, the commission shall prepare and submit a budget in the manner specified in [R.C. 5705.28(C)] to the board of county commissioners which may review the proposed budget and shall appropriate funds to the commission pursuant to Title III, [R.C. 5705.05], and [R.C. 5705.38-41]. The board, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves. The [VSC] may, prior to the first day of October in any year, submit to the board of county commissioners a written request for a hearing before the board to discuss the commission's budget request for the ensuing fiscal year. Upon receiving this request, the board shall provide for such a hearing at a regular or special meeting of the board to be held no later than fourteen days prior to the board's adoption of a permanent appropriation measure under section [R.C. 5705.38].

Thus, a VSC shall meet each year and determine the amount it needs for the aid and financial assistance it provides and for its administrative operation for the coming year. This budget is submitted to the board of county commissioners as specified in R.C. 5705.28(C). *See* R.C. 5705.28(C)(1) (“the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority ... an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision”). After receiving the VSC's proposed budget, the board of county commissioners reviews the proposed budget and appropriates funds to the commission. The board shall make the necessary levy, not to exceed five-tenths of a mill,⁴ to raise the amount that the board approves. The VSC may submit to the board of county commissioners a written request for a hearing to discuss the commission's budget request for the ensuing fiscal year. The board is to provide for this hearing within 14 days prior to the adoption of a permanent appropriation measure.

⁴ “Taxes levied under R.C. 5901.11 for the benefit of a [VSC] are part of the county general tax levy for current expenses within the 10 mills of inside millage that may be levied without voter approval. Proceeds of the county general levy, including amounts levied for the [VSC], are placed in the county general fund.” 2012 Op. Att’y Gen. No. 2012-035, at 2-310 (internal citations omitted); *see* Ohio Const. art. XII, § 2.

Health Care Insurance Provided by the County

Pursuant to R.C. 305.171(A), a board of county commissioners may “contract for, purchase, or otherwise procure and pay all or any part of the cost of ... [health care] insurance, coverage, or benefits issued by an insurance company or administered by a board of county commissioners or a contractor, for county officers and employees and their immediate dependents from the funds or budgets from which the county officers or employees are compensated for services.” *See* 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”). In other words, if a board of county commissioners elects to pay all or any part of the cost of county employees’ health care insurance policies, it is required to pay the insurance premiums from the same funds or budgets from which the employees’ salaries are paid. 2010 Op. Att’y Gen. No. 2010-017, at 2-108. Health care insurance is a benefit of employment and is considered part of an employee’s compensation. *See Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) (“the payment of [health insurance] premiums for the benefit of a public official must be considered a part of the compensation for that office”); *Madden v. Bower*, 20 Ohio St. 2d 135, 137, 254 N.E.2d 357 (1969) (“as to each employee receiving the right to the benefits of the [health] insurance, the [health insurance policy] premium is a part of the cost of the public service performed by such employee”); 2010 Op. Att’y Gen. No. 2010-017, at 2-108 (“the cost of an employee’s health insurance premium is thus treated the same as an employee’s salary,” and “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 2-069 (“insurance premium payments are a form of compensation”).

Health Insurance Premiums for Veterans Service Commission Employees Are Paid from the Revenue Described in R.C. 5901.11

Reading together R.C. 5901.06, R.C. 5901.07, and R.C. 305.171(A) it is clear that when the board of county commissioners has appropriated to the veterans service commission the full five-tenths of a mill of revenue generated by the levy referred to in R.C. 5901.11, which is the situation you described in your letter, the health care insurance premiums paid by a board of county commissioners on behalf of the employees of a VSC must be paid from the budget of the VSC identified in R.C. 5901.11.⁵ *See* 1962 Op. Att’y Gen. No. 3067, p. 441, at 446 (overruled in part on other grounds by

⁵ In an opinion issued in 1906 the Attorney General was asked about the moneys from which the compensation and expenses of the members of a soldiers’ relief commission were to be paid. At the time, a property tax levied by a board of county commissioners pursuant to R.S. 3107-51 (a statutory predecessor of R.C. 5901.11) at a rate not exceeding three-tenths of a mill was the sole funding source of a soldiers’ relief commission. The Attorney General advised that “[t]he proceeds of the three-tenths levy are to be used for the exclusive purposes for which the levy was made and the compensation and expenses of the relief commission are not among those purposes.” 1906 Annual Report of the Attorney General p. 267, at 267 (August 10, 1906). In 1962 Op. Att’y Gen. No. 3067, p.

1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) (“[c]ompensation and expenses of the employees of the commission are paid out of the funds appropriated under [R.C. 5901.11]”). The VSC submits a budget to the board of county commissioners, which reviews the proposed budget and appropriates funds to the commission. R.C. 5901.11. The board of county commissioners makes the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves for the VSC. *Id.* The Revised Code explicitly provides that the compensation for investigators and clerks “shall be paid from the county allotment of veterans service funds.” R.C. 5901.06. This phrase “plainly refer[s] to the provisions of [R.C. 5901.11], which requires the county commissioners to make an annual levy in such amount as the [veterans service] commission finds necessary, not to exceed five-tenths of a mill per dollar of assessed value of the property in the county.” 1946 Op. Att’y Gen. No. 749, p. 80, at 90. The Revised Code also explicitly provides that the compensation of service officers and employees of the VSC “shall be paid out of funds appropriated to the commission, as provided in R.C. 5901.11.” R.C. 5901.07. Thus, “[t]he compensation of persons employed under [R.C. 5901.07] is by its express terms to be paid from funds provided for in [R.C. 5901.11].” 1946 Op. Att’y Gen. No. 749, p. 80, at 90. Because compensation necessarily includes the cost of health care insurance purchased by a board of county commissioners for county employees under R.C. 305.171, *see* 2010 Op. Att’y Gen. No. 2010-017, at 2-108, the health insurance premiums for employees of the VSC are to be paid out of the revenue generated by the five-tenths of a mill tax levy imposed under R.C. 5901.11 and thereafter appropriated to the VSC.

Additional support for this conclusion is found in R.C. 305.171(A), which states that a board of county commissioners may provide health care benefits “from the funds or budgets from which the county officers or employees are compensated for services.” As set forth in R.C. 5901.11, the VSC submits a budget to the board of county commissioners, which reviews the proposed budget and appropriates money. Because VSC employees are compensated from the budget identified in R.C. 5901.11, it follows that the cost of health care insurance benefits for those employees should also be paid from the budget identified in R.C. 5901.11.

In 1969 the Ohio Supreme Court addressed this subject and indicated that when the board of county commissioners has appropriated to the veterans service commission the full five-tenths of a mill of revenue generated by the levy referred to in R.C. 5901.11, premiums for health care insurance for the VSC must be taken from within the five-tenths of a mill appropriation. The court stated:

441 (overruled in part on other grounds by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment), at 445, the Attorney General reached the opposite conclusion, stating that “compensation for [veterans service commission members] should be paid out of funds available pursuant to the tax levied by R.C. 5901.11,” for the reason that the compensation and expenses of VSC members are “necessarily incident to” the exercise of their statutory responsibility to provide aid and relief to veterans of the armed services.

If the mandated levy has been fully appropriated to the commission, no additional funds are payable from the general fund whether in the form of insurance premium costs for the benefit of the employees of the commission or for any other purpose.⁶

Madden v. Bower, 20 Ohio St. 2d 135, 141, 254 N.E.2d 357 (1969). In other words, if the full five-tenths of a mill has been appropriated to the commission, there can be no additional payment from the general fund in the form of health care insurance premiums. Rather, the cost of the health care insurance premiums must come from within the five-tenths of a mill appropriated to the VSC.

Conclusion

For the reasons discussed above, it is my opinion, and you are hereby advised, that the cost of health care insurance provided by a board of county commissioners under R.C. 305.171(A) for the employees of a county veterans service commission is a component of the employees' compensation. Pursuant to R.C. 305.171(A), R.C. 5901.06, and R.C. 5901.07, when the board of county commissioners has appropriated to the veterans service commission the full five-tenths of a mill of revenue generated by the tax levy imposed under R.C. 5901.11, the cost of health care insurance premiums incurred by a board of county commissioners for the employees of a veterans service commission shall be paid from revenues generated by the five-tenths of a mill tax levy imposed under R.C. 5901.11.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

⁶ The Ohio Supreme Court went on to say, however, that “if the entire proceeds of the one-half mill levy have not been requested or appropriated to the commission, an expenditure from the general fund for the premium costs attributable to commission employees would be authorized provided that the one-half mill levy is not thereby exceeded.” *Madden*, 20 Ohio St. 2d at 141-42. Thus, *Madden* suggests that where less than five-tenths of a mill has been appropriated to the commission, the county commissioners may draw from the general fund to pay the cost of insurance premiums. The statutory language of R.C. 5901.06 and R.C. 5901.07, however, mandates that compensation is to be paid from the funds appropriated to the VSC and does not make exception for situations when less than the full five-tenths of a mill have been appropriated. See R.C. 5901.06 (compensation “shall be paid from the county allotment of veterans service funds”); R.C. 5901.07 (“[t]he compensation of each service officer and of any employee ... shall be paid out of funds appropriated to the commission, as provided in [R.C. 5901.11]”). As detailed in your letter, the VSC currently is spending the full five-tenths of a mill that has been appropriated to it, and so the situation identified in *Madden* where less than five-tenths of a mill has been appropriated to the VSC is not the subject of this opinion.