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Attorney General Dave Yost
Opinions Section
30 East Broad Street, 26th Floor
Columbus, OH 43215

Re: Request for Opinion

Dear Attorney General Yost:

As you are aware, I am the statutory legal counsel for the Sandusky County Board of Health ("Board"). I respectfully request a legal opinion regarding the following issues which impact and relate to the Board for whom this office represents.

The Board is a member of a joint self-insurance pool ("Pool") that provides a program of health care benefits pursuant to R.C. 9.833. The Pool has become aware of captive insurance arrangements ("captives") that purchase stop loss insurance. These captives enable their members to pool their risk and purchase a stop loss insurance at a more controlled group rate, thus providing protection from the risk of significant increased cost due to high dollar claims. However, our understanding is that Ohio law does not currently provide for in-state captives for stop loss insurance purposes. As a result, if the Pool were to join a captive for stop loss insurance purposes, the captive would be located outside of Ohio. The administrator of the captive would generally be an insurance company that is licensed to do business in Ohio, such as Sun Life, Tokio Marie/HCC, or the like.

The potentially relevant statute is R.C. 9.833(B)(5), provides broad authority for joint self-insurance programs to procure or contract for "providers of medical services" and to enter into "Policies, contracts, or plans of insurance to provide health care benefits...."

The Ohio Attorney General's ("OAG") opinion, 1987 Op. Att'y Gen. No. 87-058, also may be relevant. In its 1987 opinion, the OAG determined Ohio public entities were not permitted to join with governmental entities of other states to establish a pool pursuant to R.C. 2744.081. In reaching this determination, the OAG noted that "although R.C. 2744.081 expressly authorizes political subdivisions,

as defined by Ohio law, to join with other political subdivisions in establishing and maintaining joint self-insurance pools. there is no mention of such authority to enter into agreements with entities outside this state.”

The Board has requested that I submit the below issues to the OAG because question the OAG addressed in its 1987 opinion is distinguishable from the proposal under consideration by the Pool. First, the Pool operates pursuant to R.C. 9.833 and not R.C. 2744.081. Second, in the OAG’s 1987 opinion, the public entity proposed joining with out-of-state public entities to form the R.C. 2744.081 insurance pool. Here, the Pool would be exercising its R.C. 9.833 power to contract for health care benefits by entering into the captive, and not creating the R.C. 9.833 joint-insurance pool itself.

Based on the foregoing, I am requesting that the OAG issue an opinion regarding the following questions:

1. May a joint self-insurance pool operating pursuant to R.C. 9.833 join an out of state or foreign captive insurance pool to purchase stop loss insurance?
2. If the answer to the foregoing is yes, are there any licensing requirements the out of state or foreign captive insurance pool must fulfill or would the fact that the administrator of the pool is currently licensed with the Ohio Department of Insurance be sufficient.

Should you have any questions or need anything further, please do not hesitate to contact me. Thank you in advance for your consideration in this matter.

Sincerely,



Beth A. Tischler
Prosecuting Attorney