

August 22, 2014

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
Courthouse
West Union, Ohio 45693

SYLLABUS:

2014-033

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), (the “ACA”) preempts the prohibition against in-term changes in the compensation of public officers that appears in Article II, Section 20 of the Ohio Constitution when compliance with that prohibition prevents application of the ACA’s requirements.



August 22, 2014

OPINION NO. 2014-033

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
Courthouse
West Union, Ohio 45693

Dear Prosecutor Kelley:

You have requested an opinion concerning changes in a county's health care insurance plan required by the federal Patient Protection and Affordable Care Act (the "ACA") and the applicability of Article II, Section 20 of the Ohio Constitution, which imposes certain limitations upon in-term changes in the compensation of public officers. According to your letter, payments of coinsurance and deductibles may not exceed \$6,350 for a single health care insurance plan and \$12,700 for a family plan under the ACA. The 2013 Adams County health care insurance plan set these amounts at \$7,500 for a single plan and \$15,000 for a family plan. You specifically ask:

1. When the copayments and deductible limits imposed by the ACA are less than the county's prior year's insurance policy limits for policies provided elected officials, how does the county provide health care insurance without violating Ohio Constitution, Article II, Section 20?
2. When the ACA conflicts with Article II, Section 20 of the Ohio Constitution, which prevails?

For the reasons discussed below, we conclude that the ACA preempts Article II, Section 20 of the Ohio Constitution when compliance with Article II, Section 20 prevents application of the ACA's requirements. Accordingly, it is not necessary to address your first question regarding how a county may provide health care insurance in compliance with the ACA without violating Article II, Section 20.

We will first examine the relevant laws by providing an overview of the ACA and the prohibitions imposed by Article II, Section 20 of the Ohio Constitution. We will then consider the extent to which the ACA preempts the prohibition on in-term changes in compensation set forth in Article II, Section 20.

The Patient Protection and Affordable Care Act

The United States Congress enacted the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, in 2010. *See also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2580 (2012). The ACA “aims to increase the number of Americans covered by health insurance and decrease the cost of health care.” *Id.*

“The [ACA’s] provisions are spread throughout many statutes and different titles in the United States Code.” *Florida v. U.S. Dep’t of Health and Human Servs.*, 648 F.3d 1235, 1249 (11th Cir. 2011), *aff’d in part, rev’d in part on other grounds sub nom., Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566. The ACA contains “hundreds of new laws about hundreds of different areas of health insurance and health care.” *Florida v. U.S. Dep’t of Health and Human Servs.*, 648 F.3d at 1249; *see also Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. at 2580 (“[t]he [ACA’s] 10 titles stretch over 900 pages and contain hundreds of provisions”).

One example of a provision of the ACA is the limit on copayments, coinsurance, and deductibles referred to in your letter. The ACA establishes annual limits on “cost-sharing incurred under a health plan.” 42 U.S.C.A. § 18022(c) (West 2014). “Cost-sharing” is defined, in part, to include deductibles, coinsurance, copayments, “or similar charges.” 42 U.S.C.A. § 18022(c)(3)(A)(i) (West 2014). The annual limitation on cost-sharing is set forth in two sections—the first for the year 2014, 42 U.S.C.A. § 18022(c)(1)(A), and the second for the years 2015 and later, 42 U.S.C.A. § 18022(c)(1)(B). You refer to the cost-sharing limitations for 2014. For 2014, the annual cost-sharing limitation is \$6,350 for self-only coverage or \$12,700 for family coverage.¹ *See* 42 U.S.C.A. §

¹ The Patient Protection and Affordable Care Act (the “ACA”) specifically provides:

The cost-sharing incurred under a health plan with respect to self-only coverage or coverage other than self-only coverage for a plan year beginning in 2014 shall not exceed the dollar amounts in effect under [26 U.S.C.A. § 223(c)(2)(A)(ii)] for self-only and family coverage, respectively, for taxable years beginning in 2014.

42 U.S.C.A. § 18022(c)(1)(A) (West 2014). The ACA incorporates, by reference, the dollar amounts set forth in 26 U.S.C.A. § 223(c)(2)(A)(ii), which is part of the Internal Revenue Code that governs health savings accounts. Specifically, this law establishes limits on annual out-of-pocket expenses for “high deductible health plans” as follows: \$5,000 for self-only coverage and twice that amount for family coverage. 26 U.S.C.A. § 223(c)(2)(A)(ii) (West 2014). These dollar amounts, however, were adjusted by the Internal Revenue Service (IRS) to \$6,350 for self-only coverage and \$12,700 for family coverage. IRS Revenue Procedure 2013-25 (“[t]his revenue procedure provides the 2014 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code”). Accordingly, the ACA cost-sharing limits for 2014 are \$6,350 for self-only coverage and \$12,700 for family coverage, as incorporated by reference from 26 U.S.C.A. § 223(c)(2)(A)(ii) and IRS Revenue Procedure 2013-25.

18022(c)(1)(A) (West 2014). For 2015 and later, the annual cost-sharing limitation is increased from the dollar amounts set for 2014 pursuant to a formula set forth in the ACA.² See 42 U.S.C.A. § 18022(c)(1)(B) (West 2014).

No provision in the ACA exempts or excludes local governments, including counties, from its requirements. Rather, whether a county is required to comply with a particular provision of the ACA is determined by the specific terms of the provision and the particular facts presented by the county. Your request does not ask, and therefore this opinion does not address, whether a county is required to comply with a specific provision of the ACA.

Article II, Section 20 of the Ohio Constitution and Health Insurance Benefits

Article II, Section 20 of the Ohio Constitution prohibits a change, whether an increase or decrease, in a public officer's compensation during his current term of office. 2012 Op. Att'y Gen. No. 2012-024, at 2-201; 2011 Op. Att'y Gen. No. 2011-015, at 2-141; 2000 Op. Att'y Gen. No. 2000-043, at 2-260. The provision states that, "[t]he general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished." Ohio Const. art. II, § 20. For purposes of Article II, Section 20, county officers are "officers" as the term is used therein and are therefore subject to the prohibition against in-term changes in compensation. 2011 Op. Att'y Gen. No. 2011-015, at 2-141; 1999 Op. Att'y Gen. No. 99-033, at 2-217.

Article II, Section 20 of the Ohio Constitution applies explicitly to legislative actions of the General Assembly. See, e.g., 1945 Op. Att'y Gen. No. 387, p. 473 (syllabus, paragraph 1) ("when the General Assembly pursuant to the authority of [Article II, Section 20 of the Ohio Constitution], has fixed the compensation of any officer, whether by way of salary or fees or both, any change in such compensation effected by the enactment, amendment of or repeal of any law, shall not operate to increase or decrease the compensation of such officer during his existing term unless the office be

² For the years 2015 and later, the ACA establishes the annual cost-sharing limitation as follows:

In the case of any plan year beginning in a calendar year after 2014, the limitation under this paragraph shall—

(i) in the case of self-only coverage, be equal to the dollar amount under subparagraph (A) for self-only coverage for plan years beginning in 2014, increased by an amount equal to the product of that amount and the premium adjustment percentage under paragraph (4) for the calendar year; and

(ii) in the case of other coverage, twice the amount in effect under clause (i).

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

abolished”). Article II, Section 20 also has been interpreted to apply to in-term compensation changes “approved by subordinate bodies to whom the General Assembly has delegated the authority to fix compensation.” 2000 Op. Att’y Gen. No. 2000-043, at 2-261; *accord* 2012 Op. Att’y Gen. No. 2012-024, at 2-201. Prior opinions have concluded that “the action taken by a board of county commissioners in designing the county’s health care options under R.C. 305.171 is the exercise of legislative action that has been delegated to the county commissioners by the General Assembly and to which the terms of Ohio Const. art II, § 20 apply.”³ 2005 Op. Att’y Gen. No. 2005-046, at 2-497 to 2-498 n.2; *see also* 2005 Op. Att’y Gen. No. 2005-031, at 2-326 (“because *the action taken by a board of county commissioners* under R.C. 305.171 in designing the health care options for county personnel *is a type of legislative action*, it ‘must be memorialized by a duly enacted . . . resolution and may have prospective effect only’” (footnote omitted) (emphasis added) (quoting 1982 Op. Att’y Gen. No. 82-006, at 2-19))). Therefore, if a board of county commissioners is required to make in-term changes to the health care insurance plans of its officers, the board’s action is legislative in nature, and the prohibitions in Article II, Section 20 of the Ohio Constitution apply.

Finally, it is well established that the cost of health care insurance is part of a public officer’s compensation as that term is used in Article II, Section 20 of the Ohio Constitution. 2011 Op. Att’y Gen. No. 2011-015, at 2-141; 1993 Op. Att’y Gen. No. 93-045, at 2-223; 1989 Op. Att’y Gen. No. 89-003, at 2-14; 1984 Op. Att’y Gen. No. 84-069, at 2-223; *see also State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) (“[f]ringe benefits, such as [payments for health insurance plans for county officers], are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check”); 2012 Op. Att’y Gen. No. 2012-024, at 2-201; *see generally* 2005 Op. Att’y Gen. No. 2005-031, at 2-320 to 2-321. Therefore, the prohibition in Article II, Section 20 of the Ohio Constitution applies to changes in the health care insurance benefits provided for county officers by the board of county commissioners under R.C. 305.171. 2005 Op. Att’y Gen. No. 2005-046, at 2-497; *see also* 2005 Op. Att’y Gen. No. 2005-031, at 2-324 to 2-326.

Your questions arise because, as previously noted, the Adams County health care insurance plan limits cost-sharing to \$7,500 for a single plan and \$15,000 for a family plan. The ACA cost-sharing limitation for 2014 is \$6,350 for a single plan and \$12,700 for a family plan. 42 U.S.C.A. § 18022(c)(1)(A) (West 2014). If Adams County is required to make changes to the health care insurance plan provided to county officers in order to comply with this provision of the ACA, these changes may contravene Article II, Section 20’s prohibition against in-term changes in the compensation of a public officer.⁴

³ R.C. 305.171 sets forth, in part, the options available to a board of county commissioners in providing health care benefits for county officers and employees. *See also* 2009 Op. Att’y Gen. No. 2009-015, at 2-118; 1993 Op. Att’y Gen. No. 93-045, at 2-223.

⁴ We note, however, that your second question is not limited to determining whether Article II, Section 20 of the Ohio Constitution or the ACA prevails only when a conflict arises based on the cost-sharing provision of the ACA, 42 U.S.C.A. § 18022(c)(1)(A). Rather, your second question asks

Opinions of the Attorney General have explained the various approaches the Ohio Supreme Court has taken in considering whether in-term changes to an officer's compensation are prohibited by Article II, Section 20 of the Ohio Constitution. *See, e.g.*, 2011 Op. Att'y Gen. No. 2011-015, at 2-141 to 2-142; 2005 Op. Att'y Gen. No. 2005-046; 2005 Op. Att'y Gen. No. 2005-031. For the purpose of this opinion, it is not necessary to review these approaches. And we also do not have to decide whether a particular change to a county health care insurance plan constitutes an in-term change in compensation for purposes of Article II, Section 20. It is sufficient to note that, depending on the specific facts, some in-term changes to a health care insurance plan provided to a county officer may be prohibited by Article II, Section 20, even if the changes are made in order to comply with the requirements of the ACA.⁵ *See generally* 2011 Op. Att'y Gen. No. 2011-015, at 2-141 to 2-144; 2005 Op. Att'y Gen. No. 2005-046; 2005 Op. Att'y Gen. No. 2005-031. As discussed below, the ACA preempts the application of Article II, Section 20 of the Ohio Constitution when these provisions conflict.

Federal Preemption and the ACA

The Supremacy Clause of the United States Constitution provides that “the Laws of the United States ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. The Supremacy Clause grants Congress the power to preempt the operation of state laws. *See, e.g., Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) (“[a] fundamental principle of the Constitution is that Congress has the power to preempt state law”); *Talik*

broadly “[w]hen the ACA conflicts with Article II, Section 20 of the Ohio Constitution, which prevails,” without reference to a specific provision of the ACA.

⁵ Article II, Section 20 of the Ohio Constitution, as previously explained, applies to the legislative actions of the General Assembly and subordinate legislative bodies in Ohio. *See* 2000 Op. Att'y Gen. No. 2000-043, at 2-261. No Ohio cases have addressed the application of this constitutional provision when changes to compensation are required by the terms of federal legislation, such as the ACA. The language of Article II, Section 20 does not mention legislative actions of the United States Congress. Accordingly, an in-term change in a county officer's compensation as a direct result of an act of the United States Congress that does not require any action by the General Assembly or a subordinate legislative body in Ohio presumably would not be prohibited by Article II, Section 20 of the Ohio Constitution. Here, however, the in-term change in compensation (a change in health care insurance) may require the board of county commissioners to act. If so, the action by the board of county commissioners is a legislative action of a subordinate body to which the terms of Article II, Section 20 of the Ohio Constitution apply. *See* 2005 Op. Att'y Gen. No. 2005-046, at 2-497 to 2-498 n.2; 2005 Op. Att'y Gen. No. 2005-031, at 2-326; *see also* 2011 Op. Att'y Gen. No. 2011-015, at 2-142 to 2-144 (“in this instance, direct legislative action by the board of county commissioners results in a mid-term change from one health care insurance plan to another plan that has different benefits and premiums, which is prohibited under Ohio Const. art. II, § 20”).

v. Fed. Marine Terminals, Inc., 117 Ohio St. 3d 496, 2008-Ohio-937, 885 N.E.2d 204, at ¶20. Therefore, state laws, constitutional or statutory, that conflict with federal statutes may be preempted. U.S. Const. art. VI, cl. 2; *see also U.S. v. Leach*, 639 F.3d 769, 772 (7th Cir. 2011) (“[t]he Supremacy Clause establishes that state constitutional provisions cannot override federal statutes”); *Shambaugh v. Scofield*, 132 F.2d 345, 346 (5th Cir. 1943) (federal statutes “are the supreme law of the land. If they are in conflict with State law, constitutional or statutory, the latter must yield”); *Coons v. Geithner*, No. CV-10-1714-PHX-GMS, 2012 WL 6674394, at *2 (D. Ariz. Dec. 20, 2012) (Arizona constitutional provision preempted by the ACA); *McNeil v. Legislative Apportionment Comm’n*, 177 N.J. 364, 381 (2003) (New Jersey Constitution may not violate the federal Voting Rights Act).

The United States Supreme Court and the Ohio Supreme Court have recognized that preemption may be either express or implied. *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992); *Columbia Gas Transmission Corp. v. Levin*, 117 Ohio St. 3d 122, 2008-Ohio-511, 882 N.E.2d 400, at ¶80. Express preemption occurs when Congress enacts a statute containing an explicit preemption provision. *Talik v. Fed. Marine Terminals, Inc.*, 117 Ohio St. 3d 496, at ¶21; *see also Mik v. Fed. Home Loan Mortg. Corp.*, 743 F.3d 149, 164 (6th Cir. 2014) (quoting *Arizona v. U.S.*, 132 S. Ct. 2492, 2500-01 (2012)); *Boland v. Holder*, No. 1:09 CV 1614, 2010 WL 3860996, at *4 (N.D. Ohio Sept. 30, 2010).

In the absence of express preemption, state law is preempted where federal law has occupied the entire field (field preemption) or where there is a conflict between federal law and state law (conflict preemption). *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. at 98. Field preemption occurs “where the scheme of federal regulation is ‘so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.’” *Id.* (quoting *Fidelity Fed. Sav. & Loan Ass’n v. De la Cuesta*, 458 U.S. 141, 152-53 (1982)); *see also Talik v. Fed. Marine Terminals, Inc.*, 117 Ohio St. 3d 496, at ¶22. In other words, field preemption occurs when “Congress intends federal law to ‘occupy the field.’” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. at 372. Conflict preemption occurs where it is impossible for a party to comply with both state and federal law or where state law “‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Id.* at 372-73 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see also Talik v. Fed. Marine Terminals, Inc.*, 117 Ohio St. 3d 496, at ¶23. Thus, preemption may occur in any of three ways: express preemption, field preemption, and conflict preemption.⁶

⁶ Even when a federal statute contains an express preemption provision, preemption still may be implied. *See Hillman v. Maretta*, 133 S. Ct. 1943, 1954 (2013) (“we have made clear that the existence of a separate pre-emption provision” does not bar conflict preemption); *Buckman Co. v. Plaintiff’s Legal Comm.*, 531 U.S. 341, 352 (2001) (express preemption provision does not bar “‘the ordinary working of conflict preemption principles’” (quoting *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 869 (2000))); *In re Welding Fume Prods. Liab. Litig.*, 364 F. Supp. 2d 669, 678 (N.D. Ohio 2005) (“even when Congress states expressly what aspects of state law it means to pre-empt, courts must still infer pre-emption beyond the confines of Congress’s statements if state law actually conflicts with federal law”); *Minton v. Honda of Am. Mfg., Inc.*, 80 Ohio St. 3d 62, 75-76, 684 N.E.2d

“The critical question in any preemption analysis is whether Congress intended state law to be superseded by federal law.” *Minton v. Honda of Am. Mfg., Inc.*, 80 Ohio St. 3d 62, 69, 684 N.E.2d 648 (1997); *see also Columbia Gas Transmission Corp. v. Levin*, 117 Ohio St. 3d 122, at ¶80 (“[p]reemption may be express or implied, but in either case, the question is one of congressional intent” (quoting *Mich. Consol. Gas. Co. v. Panhandle E. Pipe Line Co.*, 887 F.2d 1295, 1300 (6th Cir. 1989))); *In re Miamisburg Train Derailment Litig.*, 68 Ohio St. 3d 255, 260 (1994) (“[t]he key question in any preemption analysis is whether Congress intended for state law to be superseded by federal law”). Therefore, we must consider the language and purpose of the ACA.

With regard to preemption, the ACA states that “[n]othing in [Title I of the ACA] shall be construed to preempt any State law that does not prevent the application of the provisions of this title.” 42 U.S.C.A. § 18041(d) (West 2014). Very few cases have considered this language of the ACA or whether the ACA preempts a particular state law. One case reasoned that the ACA implicates both express and implied preemption, explaining that the preemption language in the ACA “does little more than invoke conflict preemption.” *St. Louis Effort for Aids v. Huff*, No. 13-4246-CV-C-ODS, 2014 WL 273201, at *2 (W.D. Mo. Jan. 23, 2014) (considering motion for preliminary injunction to prohibit enforcement of provisions of state statute). The court stated that the preemption language set forth in the ACA, 42 U.S.C.A. § 18041(d), “implies that it *does* preempt any State law that prevents the ACA’s operation.” *St. Louis Effort for Aids v. Huff*, 2014 WL 273201, at *2. In its analysis, the court discussed and applied the principles of implied conflict preemption. *Id.* at **2-3.

Two other courts that have considered whether the ACA preempts state law have applied the principles of conflict preemption, without relying on the specific language of 42 U.S.C.A. § 18041(d). *See Mo. Ins. Coal. v. Huff*, 947 F. Supp. 2d 1014, 1019 (E.D. Mo. 2013); *Coons v. Geithner*, 2012 WL 6674394, at **1-3. In *Missouri Ins. Coal. v. Huff*, the court noted that the ACA “has its own preemption provision.” 947 F. Supp. 2d at 1016. In its analysis of whether the ACA preempted a state statute, however, the court did not rely on the express language of the ACA. Rather, the court invoked the principles of implied conflict preemption, reasoning that:

[t]he Supremacy Clause comes into play where, among other situations, “there is an actual conflict between state and federal law” such that “compliance with both federal and state regulations is a physical impossibility ... or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

Id. at 1019 (quoting *Qwest Corp. v. Minn. Pub. Utils. Comm’n*, 684 F.3d 721, 726 (8th Cir. 2012)). The court concluded that the state law in question “creates a direct conflict” and was therefore preempted by the ACA. *Id.* at 1019-20.

648 (1997) (“*Myrick* stands for the proposition that an implied preemption analysis may be required even where there is an express preemption clause” (citing *Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995))).

Finally, in *Coons v. Geithner* the court considered whether a state constitutional provision was preempted by the ACA. 2012 WL 6674394. The state constitutional provision established various requirements regarding the provision of health care within the state. *See id.* at *2 (citing Ariz. Const., art. XXVII, § 2(A)). The purpose of the state constitutional provision was to “preserve the freedom of Arizonans to provide for their health care.” *Id.* (quoting Ariz. Const., art. XXVII, § 2(A)). In this case, the court again applied the principles of conflict preemption. *Id.* at **1-2. Finding that “the two laws are in direct conflict,” the court concluded that the state constitutional provision was preempted by the ACA. *Id.* at *2.

The ACA Preempts Article II, Section 20 of the Ohio Constitution When Compliance With Article II, Section 20 Prevents Application of the ACA’s Requirements

Based on the preemption language in the ACA, the well-established principles of preemption, and the cases that have considered ACA preemption, we believe it is appropriate to apply the principles of conflict preemption when determining whether the ACA preempts Article II, Section 20 of the Ohio Constitution. The ACA states that it does not preempt state laws that do not prevent the application of Title I of the ACA. 42 U.S.C.A. § 18041(d) (West 2014). The reasonable inference is that the ACA does preempt state laws that prevent its application, *i.e.*, the ACA preempts state laws when their operation conflicts with the ACA’s application. *See St. Louis Effort for Aids v. Huff*, 2014 WL 273201, at *2.

As previously explained, conflict preemption occurs where state law conflicts with the purposes and objectives of Congress or where it is impossible for a party to comply with both state and federal law. *See Crosby v. Nat’l Foreign Trade Council*, 530 U.S. at 372-73; *Talik v. Fed. Marine Terminals, Inc.*, 117 Ohio St. 3d 496, at ¶23. To determine whether Article II, Section 20 of the Ohio Constitution conflicts with, or “prevents the application of,” the ACA, we first consider the purposes and objectives of the ACA and Congress’s intent. *See Hillman v. Maretta*, 133 S. Ct. 1943, 1946 (2013) (“[t]o determine whether a state law conflicts with Congress’ purposes and objectives, the nature of the federal interest must first be ascertained”); *Minton v. Honda of Am. Mfg., Inc.*, 80 Ohio St. 3d at 69 (critical question in preemption analysis is congressional intent); *Columbia Gas Transmission Corp. v. Levin*, 117 Ohio St. 3d 122, at ¶80 (same as previous parenthetical). The courts have explained that

[w]hat is a sufficient obstacle [to the accomplishment and execution of the full purposes and objectives of Congress] is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.... “If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power.”

Crosby v. Nat’l Foreign Trade Council, 530 U.S. at 373 (quoting *Savage v. Jones*, 225 U.S. 501, 533 (1912)); *see also Talik v. Fed. Marine Terminals, Inc.*, 117 Ohio St. 3d 496, at ¶¶35-36 (holding that

federal statute preempts state law intentional tort claim when applying Ohio's tort standard "would be inconsistent with the central purpose underlying" the federal statute).

The overall purpose of the ACA is to increase the availability of health care insurance and decrease the cost of health care. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. at 2580; *St. Louis Effort for Aids v. Huff*, 2014 WL 273201, at *3. These purposes cannot be accomplished unless the ACA preempts state laws that prohibit a county from implementing the requirements of the ACA. A state law that counters the specific mandates of the ACA, such as the cost-sharing provision set forth in 42 U.S.C.A. § 18022(c)(1)(A), renders the ACA's mandates meaningless. *See Coons v. Geithner*, 2012 WL 6674394, at *2 ("[t]o permit the [Arizona state constitutional provision] to operate would frustrate the purpose of the [ACA] by allowing Arizona, and virtually all states, to exempt their citizens from [the ACA's] tax penalties, thus frustrating Congress's intent to encourage the purchase of minimal health insurance. Therefore the two laws are in direct conflict and Arizona's constitutional provision is pre-empted"). Accordingly, Article II, Section 20 of the Ohio Constitution and the ACA are in direct conflict when Article II, Section 20 prohibits a county from complying with the purposes and objectives of the ACA.

Further, the mandatory language used in the ACA indicates Congress's intent to preempt state laws that conflict with the ACA. For example, the cost-sharing provision of the ACA for 2014 states that cost-sharing "shall" not exceed the dollar amounts set forth therein. 42 U.S.C.A. § 18022(c)(1)(A) (West 2014). This mandatory language indicates that Congress intends to prohibit any laws that permit cost-sharing in amounts that exceed those limitations. *See Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. at 99 ("[t]he principal indication that Congress intended to pre-empt state law is [the language in the federal law] that a State 'shall' submit a plan.... The unavoidable implication of this provision is that a State may not enforce its own occupational safety and health standards without obtaining the Secretary's approval"); *see also, e.g.*, 42 U.S.C.A. § 300gg-1(a) (West 2014) (subject to certain requirements, "each health insurance issuer that offers health insurance coverage in the individual or group market in a State must accept every employer and individual in the State that applies for such coverage"); 42 U.S.C.A. § 300gg-14(a) (West 2014) ("[a] group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age").

Additionally, courts "will find [conflict] preemption where it is impossible for a private party to comply with both state and federal law." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. at 372. By way of example, we may consider the ACA's cost-sharing limitation. 42 U.S.C.A. § 18022(c)(1)(A) (West 2014). Depending on the particular facts, a change to a county's health care insurance options during the term of a county officer may be prohibited by Article II, Section 20 of the Ohio Constitution, even if the change is made in order to comply with the ACA. *See generally* 2005 Op. Att'y Gen. No. 2005-046; 2005 Op. Att'y Gen. No. 2005-031. In such a circumstance, a county may not be able to comply with the ACA without violating the prohibition in Article II, Section 20 of the Ohio Constitution. When it is impossible to comply with both Article II, Section 20 of the Ohio Constitution and the ACA, then Article II, Section 20 and the ACA are in direct conflict, and the ACA preempts Article II, Section 20.

Finally, we note that while the ACA preempts Article II, Section 20 of the Ohio Constitution when there is a conflict between the two laws, “state law is displaced only ‘to the extent that it actually conflicts with federal law.’” *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 476 (1996) (quoting *Pac. Gas and Elec. Co. v. State Energy Res. Conservation and Dev. Comm’n*, 461 U.S. 190, 204 (1983)). There are circumstances under which Article II, Section 20’s prohibition against in-term changes in the compensation of a county officer may be applied without conflicting with the ACA. For example, in-term changes in the salary of a county officer may be prohibited by the constitutional provision, but such changes are not addressed by the ACA. Thus, the ACA does not preempt Article II, Section 20, and the constitutional prohibition remains enforceable.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), (the “ACA”) preempts the prohibition against in-term changes in the compensation of public officers that appears in Article II, Section 20 of the Ohio Constitution when compliance with that prohibition prevents application of the ACA’s requirements.

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