and conditions of public employment covered by the agreement."[6] Because the provision of health insurance is a matter subject to collective bargaining, *see State Employment Relations Bd. v. State of Ohio*, 96 Ohio App. 3d 535, 645 N.E.2d 759 (Franklin County 1994),[7] such an agreement may fix the portion of the insurance premium the county must pay on behalf of each employee covered by the agreement.

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[6]The manner in which collective bargaining may affect the statutorily prescribed compensation of county employees was explained, in part, by 1998 Op. Att'y Gen. No. 98-028, at 2-150 to 2-153, as follows:

> After the enactment of R.C. Chapter 4117, in order to ascertain the amount and types of compensation to which a county employee was entitled, it became necessary to determine whether the employee was subject to a collective bargaining agreement and whether the agreement addressed the particular benefit. If so, the terms of the agreement, with certain limited exceptions, prevailed over any statutory provisions regarding that benefit. *See generally* R.C. 4117.08; R.C. 4117.10(A); *Streetsboro Educ. Ass'n v. Streetsboro City School Dist. Bd. of Educ.*, 68 Ohio St. 3d 288, 291, 626 N.E.2d 110, 113 (1994) ("[w]hen a provision in a collective bargaining agreement addresses a subject also addressed by a state or local law, so that the two conflict, R.C. 4117.10(A) delineates whether the collective bargaining provision or the law prevails. To do this, R.C. 4117.10(A) specifies certain areas in which laws will prevail over conflicting provisions of collective bargaining agreements. Consequently, where a provision of a collective bargaining agreement is in conflict with a state or local law pertaining to a specific exception listed in R.C. 4117.10(A), the law prevails and the provision of the agreement is unenforceable. However, if a collective bargaining provision conflicts with a law which does not pertain to one of the specific exceptions listed in R.C. 4117.10(A), then the collective bargaining agreement prevails"); *City of Cincinnati v. Ohio Council 8, AFSCME, AFL-CIO*, 61 Ohio St. 3d 658, 576 N.E.2d 745 (1991). In the absence of a collective bargaining agreement governing the provision of that benefit for the employee, it remained necessary to utilize the *Ebert* court's analysis to determine a county employee's right to the benefit at issue. *See generally State ex rel. Chavis v. Sycamore City School Dist. Bd. of Educ.*, 71 Ohio St. 3d 26, 29, 641 N.E.2d 188, 192 (1994) ("[a] collective bargaining agreement does not prevail over conflicting laws where it either does not specifically cover certain matters, or no collective bargaining agreement is in force" (various citations omitted)). (Footnote omitted.)

[7]*See also* 1989 Op. Att'y Gen. No. 89-009, at 2-34 to 2-35 n.1 (finding the provision of health care insurance to be an appropriate subject for collective bargaining under R.C. Chapter 4117); 1980 Op. Att'y Gen. No. 80-030 (syllabus) (finding that, prior to the enactment of R.C. Chapter 4117, "[a] county may provide health and medical coverage for a particular group of county employees, even though those benefits differ from the benefits procured for other county employees, where the benefits are provided through a jointly administered health and welfare trust fund in which the county and the collective bargaining representative of the employees agree to participate").

We have found no requirement in R.C. Chapter 4117 or in R.C. 305.171 that limits the portion of health insurance premiums a county may pay pursuant to a collective bargaining agreement in relation to the amount the county's board of commissioners has determined to pay under R.C. 305.171 on behalf of other county employees.[8] In answer to your second question, therefore, we conclude that a board of county commissioners may charge its employees whose compensation is fixed by a collective bargaining agreement a sum for health care insurance as dictated by the agreement, while charging a different sum to other county employees, so long as the differences in amount have a rational basis.[9]

Payment of Premiums for Individual or Family Coverage

You also question whether a board of county commissioners may pay one hundred percent of the premium for those county employees receiving individual health care coverage, while paying only a smaller percentage of the premium for those county employees receiving family coverage. Again, R.C. 305.171 contains no requirement that a county provide uniform health care coverage for all county employees or that the county provide

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[8]In certain instances, the General Assembly has limited the power of a county appointing authority to vary a particular statutory fringe benefit for non-bargaining unit employees when that benefit is otherwise provided for in a collective bargaining agreement covering other employees of that appointing authority. *See, e.g.*, R.C. 124.38 (stating in part, "[n]otwithstanding this section or any other section of the Revised Code, any appointing authority of a county office, department, commission, board, or body may, upon notification to the board of county commissioners, establish alternative schedules of sick leave for employees of the appointing authority for whom the state employment relations board has not established an appropriate bargaining unit pursuant to [R.C. 4117.06], provided that the alternative schedules are *not inconsistent with the provisions of a collective bargaining agreement covering other employees of that appointing authority*" (emphasis added)). R.C. 305.171 does not, however, impose such a limitation. *See generally* 1999 Op. Att'y Gen. No. 99-039 (power of county appointing authorities to establish alternative schedules of sick leave and vacation leave). We are also assuming that the collective bargaining agreements covering the various bargaining units within the county do not prohibit the type of premium differential contemplated by the county commissioners.

[9]Your final question addresses another aspect of collective bargaining for county employees. Specifically, you ask, "[i]f, due to severe economic crisis or a sudden increase in health insurance premium costs, a Board of County Commissioners is unable to continue paying employee health insurance premium costs at a previously established rate, even though required in a collective bargaining agreement, may the Board change its policy on how and at what rate it will pay employee health insurance premium costs without violating any law or being liable for engaging in an unfair labor practice? If so, what procedure must it follow to do so?" At issue in a pending case is whether a board of county commissioners that changed health insurance benefits for county personnel under R.C. 305.171 has committed an unfair labor practice under R.C. 4117.11 with respect to certain county employees covered by a collective bargaining agreement. As explained in 1972 Op. Att'y Gen. No. 72-097 (syllabus, paragraph two): "When a request for an Opinion of the Attorney General presents a question, which is at that time pending in a court proceeding, it would, in almost all cases, be improper for the Attorney General to express his opinion on such a question." We are unable, therefore, to address your question at this time. *See* 1986 Op. Att'y Gen. No. 86-039, at 2-198 (the Attorney General is "unable to use the opinion-rendering function of this office to make determinations concerning the validity of particular documents, or the rights of persons under such documents").

such coverage to all county employees on the same terms.[10] Rather, R.C. 305.171(A) expressly authorizes a board of county commissioners to "procure and pay *all or any* part of the cost of group insurance policies" of the types mentioned therein "or a *combination of any of the foregoing types* of *insurance* or *coverage* for county officers and employees and their immediate dependents from the funds or budgets from which the officers or employees are compensated for services," (emphasis added). It appears to be common practice for public employers that provide their employees health care coverage to charge such employees one sum for individual coverage and a greater sum for family coverage, because, as a general rule, the cost of obtaining family coverage exceeds the cost of single coverage. *See, e.g., State Employment Relations Bd. v. State of Ohio*. We have no basis for finding that a board of county commissioners that provides health insurance benefits for county employees under R.C. 305.171 may not pay the entire premium for an employee's individual coverage, while paying only a portion of the premium of an employee who elects to receive family coverage. The county commissioners must, of course, have a rational basis for any such difference. *See* 1984 Op. Att'y Gen. No. 84-086, at 2-295 (modified on other grounds by 1990 Op. Att'y Gen. No. 90-064).

We conclude, therefore, in answer to your fourth question, that R.C. 305.171 does not require a board of county commissioners to pay the same percentage of premium on behalf of those county employees who receive family coverage as it pays on behalf of those who receive only individual coverage, so long as the county has a rational basis for making such distinction.

Change in Payment by County Officers for Health Insurance

Your next set of questions concerns various changes in the amounts paid by county officers for their health care insurance. You specifically ask:

> [1.] Is it permissible for elected officials to elect to pay an increase in health insurance premium costs which results in a net decrease in compensation during their terms of office?
>
> [2.] If so, is it permissible for the same elected officials to then return to paying a lower premium rate, which in effect increases their total compensation but not to the same level as before they elected to pay the original rate hike, without violating any law or constitutional provision?
>
> [3.] What is the answer to the same question if an elected official has begun a new term of office when there is an opportunity to return to paying a lower rate for the health insurance premiums that results in a net increase in his compensation[?]

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[10] *Cf.* 1990 Op. Att'y Gen. No. 90-064 (syllabus) (even though R.C. 505.60 requires health insurance benefits procured thereunder to be "uniform" for township officers, township employees, and the dependents of both, the opinion found that a board of township trustees "may procure health insurance benefits which offer uniform coverage to township officers and full-time employees and their immediate dependents, *while paying only that portion of the insurance premium attributable to the officer or employee*" (emphasis added)).

prohibited by Ohio Const. art. II, § 20. By paying the increased premium from his personal financial resources for the remainder of the term the officer was serving when the increased coverage was implemented, however, the officer may take advantage of the increase in insurance coverage without receiving an in-term increase in compensation for purposes of Ohio Const. art. II, § 20. *See* 2001 Op. Att'y Gen. No. 2001-025, at 2-139 ("Ohio Const. art. II, § 20 does not prohibit a township trustee or clerk, who is holding office at the time the board of township trustees adopts a resolution pursuant to R.C. 505.60 to provide health insurance benefits to township officers and employees, from receiving such benefits if he pays the entire amount of the premiums from his personal financial resources"); 1975 Op. Att'y Gen. No. 75-061 (where the amount and rate of coverage for life insurance purchased by the state for officers and employees increase, it would not be contrary to Ohio Const. art. II, § 20 for an in-term state elected official to accept the increased coverage by paying the premiums from his personal funds). Should the officer discontinue payment from his personal financial resources of such additional cost during the term the officer was serving when the increased coverage was implemented, while continuing to receive the increased coverage at county expense, the result would be an in-term increase in compensation that is prohibited by Ohio Const. art. II, § 20.

Finally, it is possible that a board of county commissioners may increase the percentage of premiums paid by the county for health insurance benefits provided under R.C. 305.171, without any change in the coverage provided. Ohio Const. art. II, § 20 would prohibit a county officer from taking advantage of such an increase during the term the officer is serving when the increase is implemented. 1984 Op. Att'y Gen. No. 84-069, at 2-224 ("[b]y assuming and paying a greater portion of an officer's health insurance premiums than that paid when the officer commenced his term, the county is extending a more valuable fringe benefit to the officer and is thus increasing the officer's compensation. Therefore, a county elected officer may not receive the increase until the term which he was serving at the time of the increase expires").[15] In order to comply with the prohibition against in-term changes in compensation in such a situation, a county officer may not accept the county's payment of such increased percentage during the term the officer is serving when the increase is implemented. In such a situation, there would be no additional expenditure of the officer's personal financial resources in order to retain the same insurance benefits he was receiving at the beginning of his term of office and no violation of Ohio Const. art. II, § 20.

In answer to your third set of questions, we conclude that, in the event that the cost of providing health insurance for a county officer under R.C. 305.171 increases during his term of office, without any increase in the insurance coverage provided, a county's payment of the additional cost does not increase the officer's compensation for purposes of Ohio Const. art. II, § 20. In such a situation, if a county required a mid-term county officer to pay the additional premium from his personal financial resources in order to continue receiving

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[15]*See* 1997 Op. Att'y Gen. No. 97-052 (finding that, although Ohio Const. art. II, § 20 prohibited the Ohio Water Development Authority from commencing payment for health care insurance for its officers mid-term, payment for such insurance by the officials from their personal funds did not constitute an in-term change in compensation prohibited by Ohio Const. art. II, § 20); 1993 Op. Att'y Gen. No. 93-045 (where a county decreases the percentage of premiums paid by the county on behalf of county officers for insurance coverage, without any change in the amount of coverage provided, such a decrease may not be applied to in-term county officers).

the same amount of coverage, that requirement would constitute an in-term decrease in compensation prohibited by art. II, § 20.

On the other hand, if the cost of such officer's health insurance premium increases mid-term due to an increase in the coverage provided, payment of the increased premium by a county would be an in-term change in compensation prohibited by art. II, § 20. In that situation, however, a county officer may take advantage of such a mid-term increase in coverage by paying the additional cost from his personal financial resources for the remainder of the term he is serving when the increased coverage is implemented, thereby avoiding any in-term increase in compensation. Should a county officer, at any time during that same term, discontinue use of his personal funds to pay the increased premium attributable to the increased health care coverage, while continuing to receive the increased insurance coverage at county expense, such an arrangement would be in violation of Ohio Const. art. II, § 20. Upon commencement of a subsequent term of office, however, the officer is no longer prohibited by Ohio Const. art. II, § 20 from accepting the increased health insurance coverage paid from county funds. Thus, once his new term commences, a county officer may discontinue using his personal resources to pay the increased health insurance cost attributable to an increase in insurance coverage procured by the county during his previous term.

Finally, in the event that a board of county commissioners increases the percentage of the health insurance premiums it pays on behalf of county personnel, Ohio Const. art. II, § 20 prohibits a county officer from receiving the amount of any such increase for the remainder of the term the officer was serving when the increase commenced.

Conclusions

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

1. If a county has procured a health insurance policy under R.C. 305.171 that grants the county the right to renew the contract, whether or not at a substantial increase in premium, because such right of "renewal" requires the execution of a new contract, such new contract must be competitively bid in accordance with R.C. 307.86, unless the county complies with the requirements of R.C. 307.86(F). In the alternative, if a board of county commissioners has negotiated a contract in accordance with R.C. 307.86(F), R.C. 307.86 requires the board to request proposals and renegotiate with issuers as provided in R.C. 307.86(F) at least every three years from the date of signing the original contract. When proceeding under R.C. 307.86(F), a board of county commissioners is not required to engage in competitive bidding as otherwise required by R.C. 307.86.

2. A board of county commissioners may charge its employees whose compensation is fixed by a collective bargaining agreement a sum for health care insurance as dictated by the agreement, while charging a different sum to other county employees, so long as the differences in amount have a rational basis.

3. R.C. 305.171 does not require a board of county commissioners to pay the same percentage of premium on behalf of those county employees who receive family coverage as it pays on behalf of

those who receive only individual coverage, so long as the county has a rational basis for making such distinction.

4. The prohibition in Ohio Const. art. II, § 20 against in-term changes in compensation applies only to the term of office an officer is serving when a change in compensation occurs.

5. In the event that the cost of providing health insurance for a county officer under R.C. 305.171 increases during his term of office, without any increase in the insurance coverage provided, a county's payment of the additional cost does not increase the officer's compensation for purposes of Ohio Const. art. II, § 20. In such a situation, if a county required a mid-term county officer to pay the additional premium from his personal financial resources in order to continue receiving the same amount of coverage, that requirement would constitute an in-term decrease in compensation prohibited by Ohio Const. art. II, § 20.

6. If the cost of a county officer's health insurance premium increases mid-term due to an increase in the coverage provided, payment of the increased premium by a county would be an in-term change in compensation prohibited by Ohio Const. art. II, § 20. In that situation, however, a county officer may take advantage of such a mid-term increase in coverage by paying the additional cost from his personal financial resources for the remainder of the term he was serving when the increased coverage was implemented, thereby avoiding any in-term increase in compensation. Should the officer discontinue payment from his personal financial resources for the increased health care coverage provided by the county during the term the officer was serving when the increased coverage began, while continuing to receive the increased coverage at county expense, such action would constitute an in-term increase in compensation prohibited by Ohio Const. art. II, § 20.

7. Should aboard of county commissioners increase the percentage of the health insurance premiums it pays on behalf of county personnel, Ohio Const. art. II, § 20 prohibits a county officer from receiving the amount of any such increase for the remainder of the term the officer was serving when the increase commenced.