

Note from the Attorney General's Office:

1969 Op. Att'y Gen. No. 69-049 was clarified and limited by 1979 Op. Att'y Gen. No. 79-064.

1969 Op. Att'y Gen. No. 69-049 was overruled in part by 1980 Op. Att'y Gen. No. 80-030.

OPINION NO. 69-049

Syllabus:

1. The county commissioners may not authorize a county board of mental retardation to enter into a group health insurance contract, since only the county commissioners themselves may enter into a group health insurance contract pursuant to Section 305.171, Revised Code.

2. The county commissioners may enter into only such a group health insurance contract which is uniform for all county employees in all departments pursuant to Section 305.171, Revised Code.

To: J. Warren Bettis, Columbiana County Pros. Atty., Lisbon, Ohio
By: Paul W. Brown, Attorney General, May 26, 1969

I have before me your request for my opinion which reads in pertinent part:

"1. May the county commissioners authorize the Board of Mental Retardation to enter into a contract with an insurance company other than the one now in force and applicable to other county employees? Or on the other hand, must there be a uniform policy for all county employees in all departments?

"2. In the event your answer to the first question is in the affirmative, may the Board of Mental Retardation provide for coverage of sickness and accident insurance as provided by Revised Code Section 305.171 when the same type of coverage is not provided and paid for by the county commissioners for other county employees?

"3. In the event your answer to both questions 1 & 2 is in the affirmative, may the county auditor pay the premium for the insurance from the moneys collected by the county commissioners from the levy now in full force and effect or must the commissioners pay for this coverage from the general fund of the county?"

Section 305.171, Revised Code, provides as follows:

"The board of county commissioners of any county may procure and pay all or any part of the cost of group hospitalization, surgical, major medical, or sickness and accident insurance or a combination of any of the foregoing types of insurance or coverage for county officers and employees and their immediate dependents, whether issued by an insurance company or a hospital service association duly authorized to do business in this state." (Emphasis added.)

Section 305.171, supra, makes it clear that only county commissioners may enter into a contract for the purchase of group insurance for county employees. Since a county board of mental health and retardation has no statutory authority to purchase group health insurance, such group insurance may be purchased for employees of a board of mental health and retardation by the county commissioners only. I have recently opined that employees of a county mental health and retardation board are "county employees" within the meaning of Section 305.171, supra. Opinion No. 69-045, Opinions of the Attorney General for 1969.

The next related question is whether the county commissioners may enter into a group insurance contract other than the one now in force for the benefit of employees of a mental health and retardation board, or whether there must be a uniform policy for all county employees in all departments, pursuant to Section 305.171, supra.

"Group insurance" is defined as the coverage of a number of individual persons by one comprehensive policy. Adkins v. Aetna Life Insurance Co., 310 W. Va. 362, 43 S.E. 2d, 372. I can conclude only that the group referred to in Section 305.171, supra, is the entire number of county employees. I am convinced that the legislature desired one uniform group health insurance policy for all county employees, without regard to the various health insurance policy terms which may be negotiated by the county commissioners pursuant to Section 305.171, Revised Code. This result is dictated because of the possible iniquities which would arise with respect to different groups of county employees if several policies were purchased. Also, if more than one policy were contracted for by the county commissioners, there would be increased premium cost per person as each policy would encompass fewer people.

Section 3923.12 (C) (3), Revised Code, provides:

"(C) Each such [] sickness and accident insurance [] policy shall contain in substance the following provisions:

* * * * *

"(3) A provision that to the group originally insured may be added from time to time eligible new employees or members, their dependents, or members of their immediate families, in accordance with the terms of the policy."

Thus, provision is made for the mandatory coverage of any new county employees under any policy now in force, which negates a possible justification for having another policy for new county employees.

Since the response to your first question is in the negative, your second and third questions need not be considered, but I call your attention to Opinion No. 68-140, Opinions of the Attorney General for 1968, which is relevant to your third question.

Therefore, it is my opinion and you are advised that:

1. The county commissioners may not authorize a county

board of mental retardation to enter into a group health insurance contract, since only the county commissioners themselves may enter into a group health insurance contract pursuant to Section 305.171, Revised Code.

2. The county commissioners may enter into only such a group health insurance contract which is uniform for all county employees in all departments pursuant to Section 305.171, Revised Code.