

Mark,

My assistant prosecutor, Scott Schockling, has previously replied to the Auditor of State. I have attached a copy of our letter to this email. Feel free to use it for your purposes.

You should note, however, that the Auditor of State declined to accept our rationale.

At least one Champaign County township fiscal officer (Jackson Township Fiscal Officer David Peirson) has been notified of a proposed finding on this issue. I have advised the township that this office will not pursue collection, since we believe that it acted lawfully. It may result in a showdown between our office and the AG's office for final determination.

I hope our information helps you.

Nick Selvaggio  
Champaign County Prosecutor  
----- Original Message -----

**From:** [John Murphy](#)  
**To:** [William Mason](#) ; [Amanda Spies](#) ; [Andrew J. Hinders](#) ; [Bradford Bailey](#) ; [C. David Kelley](#) ; [C. David Warren](#) ; [Charles E Coulson](#) ; [Charles F Kennedy III](#) ; [Charles Howland](#) ; [Christopher Berhalter](#) ; [Thomas A. Thompson](#) ; [Dan Padden](#) ; [David A. Yost](#) ; [David Bender](#) ; [David L Landefeld](#) ; [David P Joyce](#) ; [David Phillips](#) ; [Dean Holman](#) ; [Dennis Watkins](#) ; [Dennis Will](#) ; [Donald R. Burns Jr.](#) ; [Donald W White](#) ; [Edwin A Pierce](#) ; [Gary A Nasal](#) ; [Gary Lammers](#) ; [Gerald L Heaton](#) ; [J. B Collier Jr.](#) ; [James E. Schneider](#) ; [James J Mayer Jr.](#) ; [Jeff Adkins](#) ; [Jeffery Strausbaugh](#) ; [Jim Grandey](#) ; [Jim Slagle](#) ; [Joe Deters](#) ; [John D. Ferrero Jr.](#) ; [John H Hanna](#) ; [John Thatcher](#) ; [Jonathan D. Blanton](#) ; [Jonathan K. Miller](#) ; [Joseph A Flautt](#) ; [Judy Wolford](#) ; [Juergen Waldick](#) ; [Julia R Bates](#) ; [Kenneth H Egbert Jr.](#) ; [Kevin J Baxter](#) ; [L. Kent Riethmiller](#) ; [Mark E. Kuhn](#) ; [Mark Miller](#) ; [Mark Mulligan](#) ; [Martin Frantz](#) ; [Martin Votel](#) ; [Mathias H Heck Jr.](#) ; [Michael M. Ater](#) ; [Mike Haddox](#) ; [Nick A Selvaggio](#) ; [Pat Story](#) ; [Paul J Gains](#) ; [Rachel Hutzel](#) ; [Ralph A. Bauer](#) ; [Ramona Rogers](#) ; [Raymond Fischer](#) ; [Richard M Howell](#) ; [Amy Graham](#) ; [Robert Batchleor](#) ; [Robert Herron](#) ; [Robert Junk](#) ; [Kenneth Oswald](#) ; [Robert Watson](#) ; [Robin N. Piper](#) ; [Roger Nagel](#) ; [Ron O'Brien](#) ; [Russell Leffler](#) ; [Sherri Bevan Walsh](#) ; [Stanley E. Flegm](#) ; [Stephen A Schumaker](#) ; [Stephen J Pronai](#) ; [Stephen K. Haller \(Stephen K. Haller\)](#) ; [Stephen Knowling](#) ; [T. Shawn Hervey](#) ; [Thomas F Grennan](#) ; [Thomas L Sartini](#) ; [Thomas L. Stierwalt](#) ; [Thomas Straus](#) ; [Timothy P Gleeson](#) ; [Victor Viguicci](#) ; [William E Peelle](#) ; ['Joseph Burkard'](#)  
**Sent:** Wednesday, July 30, 2008 2:33 PM  
**Subject:** FW: 505.60 and 505.601 Reimbursement of Hospitalization Insurance

If you wish to respond, please contact Mark at the e-mail address shown.

-----Original Message-----  
**From:** Mark Altier [mailto:[mwaltier@co.miami.oh.us](mailto:mwaltier@co.miami.oh.us)]  
**Sent:** Wednesday, July 30, 2008 2:14 PM  
**To:** [murphyj@ohiopa.org](mailto:murphyj@ohiopa.org)  
**Cc:** Gary Nasal  
**Subject:** 505.60 and 505.601 Reimbursement of Hospitalization Insurance

We have at least two townships as to which the Office of the Ohio Auditor of State is threatening findings for recovery for the reimbursement of township officers and/or employees for the cost of securing hospitalization coverage from a source other than the township. The Auditor's Examiners are citing 2005 OAG 038 in support of their position. The matters involve township officers or employees who have secured their insurance through another of their employers or through the employer of a spouse under a reimbursement policy adopted pursuant to the law. As appears to have been common practice, however, the townships paid not only the cost of

securing insurance for the township officer or employee, but also for family coverage to benefit the spouse and children of the township officer or employee. It is my understanding that this issue is cropping up around the state. We are now being asked our opinion on this matter. Can you assist us in determining what positions other prosecutors have taken in this regard? Thank you.

March 4, 2008

Robert Nuzum  
Senior Audit Manager  
Auditor of the State of Ohio  
One First National Plaza  
130 West Second Street  
Suite 2040  
Dayton, Ohio 45402

Re: Jackson Township Health Insurance Reimbursement Policy

Dear Mr. Nuzum:

The Jackson Township Board of Trustees has adopted a resolution asking this office to defend their health insurance resolutions and more particularly, their reimbursement of Township Fiscal Officer David Pierson for the insurance premiums he has paid on behalf of himself and his wife.

By way of background, Fiscal Officer Pierson declined coverage on the township policy following his election in 2003. Rather, Mr. Pierson had procured, through his business and prior to becoming Fiscal Officer, a health insurance for himself and his wife. The Piersons did not want to be covered by the township policy because of pre-existing medical conditions.

The Board of Trustees, on March 15, 2004, adopted Resolution 03152004A, which stated that the township would reimburse Mr. Pierson for out-of-pocket health insurance premiums, in accordance with R.C. 505.60(C). The resolution further stated that the reimbursement would not exceed the average premium that the township paid on behalf of its employees.

On December 27, 2007, the Board of Trustees adopted Resolution 12272007B, which again stated that the township would reimburse Mr. Pierson for out-of-pocket health insurance premiums, in accordance with R.C. 505.60(C). The resolution further stated that the reimbursement would not exceed the average premium the township pays on behalf of its employees, up to a maximum of \$7,500.00.

Pursuant to these resolutions, Jackson Township has been reimbursing Mr. Pierson for the premiums he has paid for himself and his wife. The Auditor of State,

relying upon 2005 Ohio Atty.Gen.Ops. No. 2005-038, has taken the position that R.C. 505.60(C) only allows a township to reimburse an official or employee for the out-of-pocket premiums paid on his or her behalf. According to the Auditor, the reimbursement permitted under R.C. 505.60(C) does not include reimbursement for premiums attributable to family members, such as Mr. Pierson's wife. The Champaign County Prosecutor's Office, for the reasons set forth below, disagrees with the Auditor's position.

At the outset, it should be noted that R.C. 505.60 provides as follows:

(A) As provided in this section . . . . , the board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees. . . .

(B) If the board procures any insurance policies under this section, the board shall provide uniform coverage under these policies for township officers and full-time township employees and **their immediate dependents**, and may provide coverage under these policies for part-time township employees and **their immediate dependents**, from the funds or budgets from which the officers or employees are compensated for services, such policies to be issued by an insurance company duly authorized to do business in this state. Any township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers and employees. . . .

(C) If any township officer or employee is denied coverage under a health care plan procured under division (B) of this section or if any township officer or employee elects not to participate in the township's health care plan, the township may reimburse the officer or employee for each out-of-pocket premium that the officer or employee incurs for insurance policies described in division (A) of this section that the officer or employee otherwise obtains, but not to exceed an amount equal to the average premium paid by the township for its officers and employees under policies it procures under division (B) of this section.

(emphasis added).

R.C. 505.60(A) authorizes boards of township trustees to procure and pay any or all of the cost of insurance policies that provide hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, sickness and accident insurance, or any combination of the above for township

officer and employees. Division (A) only mentions procuring insurance for township officers and employees. No mention is made of immediate dependents.

R.C. 505.60(B), however, requires any board of township trustees that procures insurance policies to offer the benefit on a uniform basis to its officers, full-time employees, and their immediate dependents. If part-time employees are offered coverage, Division (B) also requires that provision be made for their immediate dependents. Thus, Division (B) requires townships to offer coverage to immediate dependents, even though Division (A) only speaks of procuring and paying the insurance of township officers and employees. Clearly, Division (B) is inconsistent with Division (A).

Moreover, only Division (A) actually authorizes townships to purchase insurance. Division (B) only provides for uniformity by stating: “If the board procures any insurance policies under this section, the board shall provide uniform coverage . . . for township officers and full-time employees and their immediate dependents[.] . . .” It is Division (A) (“As provided in this section . . . , the board of township trustees of any township may procure and pay all or any part of the cost of insurance policies. . .”) that actually authorizes the purchase of insurance.

Whenever possible, statutes are to be interpreted harmoniously, so as to give effect to both sections.<sup>1</sup> Thus, Divisions (A) and (B) must be reconciled and applied so as to render their contents operative and valid. Since only Division (A) authorizes the actual purchase of insurance, yet makes no reference to immediate dependents, and Division (B) provides that any such policies must provide coverage to immediate dependents, Division (A) must be read authorizing the purchase of insurance for such dependents. By so doing, the inconsistency that exists between Divisions (A) and (B) is eliminated.

Furthermore, R.C. 505.60(C) allows townships to reimburse officers and employees for each out-of-pocket premium that the officer or employee incurs for “insurance policies described in Division (A) of this section.” Since Division (A) must be read as authorizing the purchase of insurance for immediate dependents, it necessarily follows that the phrase “insurance policies described in Division (A) of this section” includes coverage for immediate dependents. In other words, a township is authorized to reimburse an employee or officer for the out-of-pocket premiums that he or she pays on behalf of his immediate dependents, in addition to the ones paid on behalf of the officer or township.

Ergo, it is the opinion of this office that the Jackson Township Board of Trustees was duly authorized to enact Resolutions 03152004A and 12272007B, authorizing the reimbursement of Fiscal Officer Pierson for the premiums he has paid on behalf of himself and his wife.

If you have any questions, you may contact this office.

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<sup>1</sup> E.g., *Gen. Motors Corp. v. McAvoy* (1980), 63 Ohio St. 2d 232, 235.

Yours truly,

NICK A. SELVAGGIO, CHAMPAIGN  
COUNTY PROSECUTING ATTORNEY

Scott D. Schockling  
Assistant Prosecuting Attorney

cc: Jackson Township Board of Trustees, c/o David Pierson, Fiscal Officer  
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