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March 8, 2018

Hale Township Trustees
Attn: Gina Messner, Fiscal Officer
435 W. Marion St.
Mt. Victory, OH 43340

Dear Hale Township Trustees,

I am in receipt of your March 5, 2018 letter, requesting answers to healthcare reimbursement questions. First question, are we required to offer the plan to an employee who is not an elected official? The answer would be yes "with qualification." Ohio Revised Code 505.60 states that if a township purchases group insurance in accordance with 505.60, the word "group" refers to township officers, employees and their immediate dependents, 1969 Ohio Attorney General Opinion 46. Mind you, the only group you have to purchase for is for full time employees. Ohio Revised Code 505.60 defines "part time township employee" to be anyone who works less than 1,500 hours in a year. Therefore, your only responsible for covering full time employees and do not have an obligation to cover part time employees unless you so desire. Township officers are considered obviously the Trustees as well as elected officials, such as the clerk. Therefore, your focus of inquiry is whether the individual in question is full time or part time. Additionally, the coverage you give must be uniform. My advice is to pass a new resolution stating your policies since you had one in place and you just simply let it lapse, it's not clear from your record whether you rescinded it or not. I've been told that you did not but you ignored your own resolution because you were told you were no longer permitted to follow it because of the Affordable Care Act, however, that policy is still in place. To clear the record up, I would rescind that old resolution and pass a fresh resolution, setting forth your policy of reimbursement of healthcare insurance premiums or/and offering group insurance coverage, whichever route you're going to go.

Next question, are we required to comply with the maximum reimbursement levels, or are we permitted to establish a lesser amount? (i.e. regarding QSEHRA) Yes you can establish a lesser amount. The QSEHRA as you have pointed out was healthcare reimbursements up to \$4,950.00 annually or \$412.50 a month. This must be paid out equally to all individuals. Any reimbursement policy established by the township must be uniformly applied, meaning every individual gets the same amount of money of the reimbursement, or if you provide insurance coverage, they must get the same amount of coverage uniformly. However, if your township decides to reimburse, it cannot exceed \$412.50 a month, uniformity is key. The same logic applies for the family reimbursement levels as well. Therefore, to answer your question, you don't have to reimburse up to the maximum, you can't exceed the maximum but you can be less than the maximum. But it must be uniformly applied across the board as the policy of the township, to all individuals that are eligible for reimbursement.

Next Question, are we permitted to only reimburse coverage of the elected official/employee, or are we required to reimburse for coverage of the entire family? Based on the Attorney General Opinion 92-068 in accordance with 505.60, once you offer insurance to officers or full-time employees, you must cover their dependents as well.

Next question, are we permitted to have elected officials/employees waive the 90-day notice so that we may implement the reimbursement immediately? The answer is no. See answer to next to last question.

Are Medicare parts A, B & D eligible for reimbursement? As I pointed out in my letter to Lynn Township, you can reimburse for Medicare or supplemental social security. Again, the reimbursement must be a uniform policy and again it cannot exceed the individual amount of \$412.50 a month or the family amount of \$833.30. So, the answer is yes, you can reimburse but again you have your maximum cap.

Next Question, would this be considered an in-term change in compensation, even though it is a non-taxable benefit? The answer is yes, this goes back to the question regarding the 90-day notice. The fact that we have a notice, this is considered an in-term compensation benefit and therefore illegal. See in my letter to Blanchard township, Ohio Attorney General Opinion 92-068, and the case of Schulte v. Steingraber. These issues have already been addressed, it is considered an illegal interim increase in compensation and thus a violation of the Ohio Constitution. Therefore, one can't correct it by passing a resolution by trying to make it retroactive. The best bet would be to pass a corrected resolution, get it on the books and get the policy started and stated. At the next election of the individual officers, then they would be eligible for the benefits of this reimbursement program. Full time employees are different, however, and they would be eligible for it the moment you put it into effect, as they are not covered by this constitutional provision restriction.

Therefore, with this letter and the attached letters that I have given your sister townships, I believe that I have addressed these issues and I am including the attachments that I have given your sister townships with this, for your reading. In summary you can't pass a resolution for interim compensation by way of healthcare reimbursement. However, you still need to pass a resolution stating your policy on reimbursement or coverage in order to have a policy on the books, in place prior to new elections.

You can cover reimbursements for Medicare and you can go up to \$412.50 a month but can't exceed that dollar amount, you can go below it but not exceed it. And the key on whether the employees get the benefit, is whether they are full time. Full time is considered anyone who works over 1,500 hours a year. Enclosed is a copy of 505.60, the current copy of the statute and letters from Blanchard township and Lynn township. If you have any further questions feel free to contact me.

Sincerely,

Bradford W. Bailey
Hardin County Prosecutor