February 1, 1999

OPINION NO. 99-002

James Conrad, Administrator
Ohio Bureau of Workers' Compensation
30 West Spring Street
Columbus, Ohio 43215-2256

Dear Administrator Conrad:

You have requested an opinion concerning the investment of moneys held in the state insurance fund. You have indicated that the Bureau of Workers' Compensation (Bureau) has been approached with a proposal from a private corporation involving the formation of a partnership for the purpose of constructing and operating a parking garage. Funding for the project would come from the private corporation and the state insurance fund, which is administered by the Bureau.

According to information your staff has provided to us, the purpose of the partnership to be established by the Bureau and the private corporation is to generate income for, and provide parking for the employees of, the Bureau and the private corporation. Pursuant to the proposed partnership agreement, both the Bureau and the private corporation will finance the operations of the partnership and share in any profits or losses generated by the partnership in the operation of the parking garage. The Bureau's portion of financing for the partnership will be from the surplus or reserve of the state insurance fund. Any profits paid to the Bureau from the operation of the parking garage will be deposited in the state insurance fund and any losses or liabilities suffered by the Bureau from the operation of the parking garage will be paid from the state insurance fund. No moneys raised by taxation or appropriated by the General Assembly to the Bureau will be used to finance the project, or obligated for the purpose of reimbursing the state insurance fund for any losses it incurs as a result of the project. In addition, the Bureau intends to either lease or sell to the partnership the land upon which the parking garage will be constructed. Because the land on which the parking garage is to be constructed was purchased with moneys from the state insurance fund, all proceeds from the lease or sale of the land to the partnership will be deposited in the state insurance fund.

The Bureau is interested in undertaking this project. However, you are concerned with the propriety of this type of investment. As explained in your letter:

> If the [Bureau] were to partner with a private [corporation] for the construction and operation of a parking garage for profit, would this type of business structure between a state agency and a private [corporation] be considered appropriate pursuant to the [Bureau's] enabling statutes as well as an appropriate exercise of the [Bureau's] investment authority?
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> ….
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> I am aware of the legal ramifications of a state administrative agency engaging in the partnering with a private organization for profit as well as the restrictions placed on a state administrative agency that has the authority to perform only that which is enumerated in its enabling statutes. More importantly, what implications, if any, does the prohibition against the pledging of the credit of the state as enumerated in Article VIII, Section 4 of the Ohio Constitution, have on this type of investment opportunity for the [Bureau] as the custodian of the State Insurance Fund?

You wish to know, therefore, whether the Bureau may form a partnership with a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage.

In addition, you are concerned with the authority of the Bureau to lease the land in question to the private corporation if the Bureau is not permitted to form the aforementioned partnership. In this regard, your letter states:

> In the alternative, if [a partnership] is not possible between a state administrative agency and a private [corporation], is it permissible for a state agency to lease land it owns to a private [corporation] wherein that private [corporation] would develop and operate a parking garage with minimal, if any financial contribution from the state administrative agency, with the state administrative agency retaining the option to lease a fixed number of parking spaces, for a fixed sum, for a fixed term, such that the state administrative agency would not be in violation of its enabling statutes or its investment authority?

Accordingly, you also wish to know, if the Bureau is not authorized to form a partnership with a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage, whether the Bureau may lease to the corporation the land on which the parking garage is to be constructed.

Let us begin with your first question, which asks whether the Bureau may form a partnership with a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage. The General Assembly has created the state insurance fund to provide "compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such

workmen's employment." Ohio Const. art. II, § 35; *accord* R.C. 4123.30; R.C. 4123.46; *see also* R.C. 4123.29(A)(2) (the Administrator of Workers' Compensation shall maintain a state insurance fund from year to year). The state insurance fund is composed of a "public fund" and a "private fund." R.C. 4123.30. Pursuant to R.C. 4123.30, money contributed by public employers comprises the "public fund," while money contributed by private employers comprises the "private fund." The "public fund" and "private fund" are two separate funds that are to be collected, distributed, and maintained in a solvent manner without regard to or reliance upon the other. R.C. 4123.30. However, the moneys of such funds may be commingled for purposes of deposit and investment. *Id*.

General authority to invest the surplus and reserve of the state insurance fund is set forth in R.C. 4123.44. This statute provides in relevant part:

> The administrator of workers' compensation, in accordance with the investment objectives, policies, and criteria established by the workers' compensation oversight commission pursuant to section 4121.12 of the Revised Code, may invest any of the surplus or reserve belonging to the state insurance fund.
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> The administrator and other fiduciaries shall discharge their duties with respect to the funds with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the assets of the funds so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
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> To facilitate investment of the funds, the administrator may establish a partnership, trust, limited liability company, corporation, including a corporation exempt from taxation under the Internal Revenue Code, 100 Stat. 2085, 26 U.S.C. 1, as amended, or any other legal entity authorized to transact business in this state.

See also R.C. 4121.121(B)(7) (authorizing the Administrator of Workers' Compensation to exercise the investment powers vested in the Administrator by R.C. 4123.44); 10 Ohio Admin. Code 4123-9-03(D) (the financial division of the Bureau of Workers' Compensation is required to assist "the administrator in the investment and management of the surplus and/or reserves in accordance with the investment philosophy of the workers' compensation oversight commission").

R.C. 4123.44 vests the Administrator of Workers' Compensation with the authority to invest the surplus and reserve of the state insurance fund.[1] In addition, to facilitate the investment of such moneys, the administrator is authorized to establish a partnership. *Id*. In Ohio, "[a] partnership is an association of two or more persons to carry on as co-owners a business for profit." R.C. 1775.05(A). For purposes of R.C. 1775.05, the term "person" includes corporations. R.C. 1775.01(C). *See generally* R.C. 1.59(C) (as used in any statute, the term "person" includes corporations unless another definition is provided in such statute or a related statute). Accordingly, in order to facilitate the investment of the surplus and reserve of the state insurance fund, R.C. 4123.44 authorizes the Administrator to establish a partnership with a private corporation.

Although R.C. 4123.44 delegates such authority to the Administrator, it must be determined whether use of a portion of the surplus or reserve of the state insurance fund for the purpose of constructing and operating a parking garage is an investment for purposes of R.C. 4123.44, and whether such an investment is appropriate or permissible. The terms "invest" and "investment" are not statutorily defined for purposes of R.C. 4123.44. "Nonetheless, the terms, 'invest,' and 'investment,' have been defined elsewhere as referring generally to the devotion of monetary resources to any type of activity that has as its purpose the realization of financial gain or profit." 1989 Op. Att'y Gen. No. 89-033 at 2-145. *See generally* R.C. 1.42 (words and phrases shall be construed according to the rules of grammar and common usage); *State ex rel. Bowman v. Columbiana County Bd. of Comm'rs*, 77 Ohio St. 3d 398, 400, 674 N.E.2d 694, 695 (1997) ("[u]ndefined words used in a statute must be accorded their usual, normal, or customary meaning"). As defined in *Webster's New World Dictionary* 741 (2d college ed. 1986), "invest" means, *inter alia*, "to put (money) into business, real estate, stocks, bonds, etc. for the purpose of obtaining an income or profit." The term "investment" is similarly defined in *Black's Law Dictionary* 825 (6th ed. 1990) as follows:

> **Investment.** An expenditure to acquire property or other assets in order to produce revenue; the asset so acquired. The placing of capital or laying out of money in a way intended to secure income or profit from its employment. To purchase securities of a more or less permanent nature, or to place money or property in business ventures or real estate, or otherwise lay it out, so that it may produce a revenue or gain (or both) in the future. (Citation omitted.)

Accordingly, pursuant to R.C. 4123.44, the Administrator of Workers' Compensation may devote the surplus and reserve of the state insurance fund to an activity that has as its

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[1] The Administrator of Workers' Compensation is also specifically authorized to invest the surplus and reserve of the state insurance fund in loans to the marine industry fund, R.C. 4131.13, or obligations issued by the Ohio Building Authority pursuant to R.C. 152.23, R.C. 152.27.

purpose the realization of financial gain or profit. *See* 1989 Op. Att'y Gen. No. 89-033. Further, while R.C. 4123.44 requires the Administrator to make investments with prudence, it does contemplate that investments may suffer losses. Hence, the Administrator is advised to diversify investments so as to minimize the risk of large losses but is not required to avoid any type of investment from which a loss is possible.

With respect to your specific question, you have indicated that the Bureau is interested in undertaking the construction and operation of a parking garage to generate income for the Bureau. By leasing out parking spaces, the Bureau expects to receive a steady stream of income. Also, if the Bureau leases to the partnership the land on which the parking garage is to be constructed, the Bureau will receive additional income. In addition, the parking garage is an asset that may be sold for a financial gain. The Bureau also could realize a profit if the Bureau sells the partnership the land on which the parking garage is to be constructed. Finally, the formation of a partnership by the Bureau and the private corporation indicates that the parking garage is to be operated as a business for profit. *See* R.C. 1775.05 ("[a] partnership is an association of two or more persons to carry on as co-owners a business for profit"). Thus, the formation of a partnership to construct and operate a parking garage in the manner described above is an activity that has as its purpose the realization of financial gain or profit. Therefore, use of a portion of the surplus or reserve of the state insurance fund for the purpose of forming a partnership to construct and operate a parking garage constitutes an investment for purposes of R.C. 4123.44.

Let us now consider whether the foregoing investment presents any problems under the lending aid and credit prohibition of the Ohio Constitution. As a general matter, Ohio Const. art. VIII, § 4 prohibits the union of the resources of the state with private enterprise. In this regard, Ohio Const. art. VIII, § 4 states:

> The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

The language of Ohio Const. art. VIII, § 4 thus prohibits arrangements wherein the fiscal resources or property of the state and private enterprise are combined in a mutual business partnership or joint venture.[2] 1996 Op. Att'y Gen. No. 96-051 at 2-195; *see State ex rel.*

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[2] Ohio Const. art. VIII, § 6 imposes a similar restriction upon the lending of credit by political subdivisions of the state. "Cases interpreting either § 4 or § 6 may be consulted in construing the other provision." 1996 Op. Att'y Gen. No. 96-060 at 2-242; *see State ex rel. Eichenberger v. Neff*, 42 Ohio App. 2d 69, 74-75, 330 N.E.2d 454, 458 (Franklin County 1974).

Eichenberger v. Neff, 42 Ohio App. 2d 69, 330 N.E.2d 454 (Franklin County 1974) (an arrangement between an agency of the state and a private corporation under which property belonging to each is joined for the purposes of a commercial venture results in a lending of the credit of the state and violates Ohio Const. art. VIII, § 4); 1978 Op. Att'y Gen. No. 78-040 (syllabus) ("[a] board of education is prohibited by Ohio Const. art. VIII, § 4 from entering into a joint venture with a commercial oil company to construct and operate for profit a gas and service station on school property as part of a vocational education program").

In 1996 Op. Att'y Gen. No. 96-060 at 2-242, we stated that, in order to determine whether a particular governmental undertaking is prohibited by Ohio Const. art. VIII, § 4,

> [o]ne must first determine whether the contemplated action produces a lending of the *state's* aid or credit to an individual, association, or a corporation, or a union of the resources of the *state* with private enterprise. If not, then the proposed action will be deemed permissible under the constitutional provision, and allowed to proceed. (Emphasis added.)

See 1974 Op. Att'y Gen. No. 74-102. We must first determine, therefore, whether moneys in the state insurance fund belong to the state for purposes of Ohio Const. art. VIII, § 4.

Prior opinions of the Attorneys General have determined that certain categories of moneys, which are held by the state in trust, are not moneys belonging to the state for purposes of Ohio Const. art. VIII, § 4. In 1974 Op. Att'y Gen. No. 74-102, the Attorney General concluded that Ohio Const. art. VIII, § 4 is not violated when the Ohio Public Employees Deferred Compensation Board invests moneys it holds for employers in the equity and debt instruments described in R.C. Chapter 145. As explained in that opinion, although rulings by the Internal Revenue Service require the salary deferred by a state employee to be held by his employer, *i.e.*, the State of Ohio, the state holds such salary in a custodial capacity rather than as moneys belonging to the state. In support of this conclusion, the opinion cited cases from other jurisdictions that found that not all moneys in a state treasury are state moneys or moneys belonging to the state. Instead, moneys may be placed in the custody of the state treasurer for a particular purpose, and disbursed upon the authorization of another official, commission, or board, without an appropriation from the legislature. In such a situation, the moneys are proprietary moneys committed to the custody of the state treasurer as trustee.

In light of these cases, 1974 Op. Att'y Gen. No. 74-102 concluded that employee contributions to the public employees deferred compensation program are a clear example of funds that are held by the state treasurer in a custodial capacity rather than as funds belonging to the state. *See generally* 1982 Op. Att'y Gen. No. 82-082 (syllabus, paragraph one) ("[t]he General Assembly may create custodial accounts which are maintained by the Treasurer of State but are not part of the state treasury for purposes of appropriation as provided for by Ohio Const. art. II, § 22"). Such contributions are placed in the custody of the state treasurer for a particular purpose and disbursed by the Ohio Public Employees Deferred Compensation Board without an

appropriation from the General Assembly. In that case, the contributions belong to the employees making the contributions, not the state.

In like fashion, 1973 Op. Att'y Gen. No. 73-006, which concerned the use of funds returned to the State of Ohio pursuant to the Rural Rehabilitation Corporation Trust Liquidation Act for the purpose of guaranteeing loans made by commercial banks to Ohio farmers, stated at 2-18:

> The assets in question are not "the money of the state", but federal monies held in trust by the state for a specific purpose. The money was originally held by private nonprofit corporations in the several states, not by the state governments. As the Court says in State, ex rel. Saxbe, v. Brand, supra, at 176 Ohio St. 48, Article VIII, Section 4, does not apply to "the borrowing and loaning by an entity separate from the state."
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> The original state corporations transferred their assets, which were actually federal funds, to the federal government, to be held in trust and administered for their original purpose. Since then, their use has been controlled by federal executive order and statute. When they were "returned" to the states, it was only for liquidation of these assets by disposal for purposes authorized by federal law, and approved by the Secretary of Agriculture. Thus, the State of Ohio merely holds these funds in trust for certain purposes which were decided by the Congress, not the General Assembly. While the state government does have some discretion in specific expenditures, the fact that the Secretary of Agriculture's approval is required strongly indicates that the funds in question are not the state's money.

Let us now turn to your specific inquiry. Pursuant to R.C. 4123.30, except for amounts earmarked for the investigation and prevention of industrial accidents, actuarial audits, and reinsurance premiums, the state insurance fund is a trust fund maintained for the benefit of employees and employers as a source of payment of compensation and benefits. *See* Ohio Const. art. II, § 35. The moneys in the fund are collected as premiums from employers. No money in the fund is raised by taxation or an appropriation from the General Assembly. *See* Ohio Const. art. II, § 35; R.C. 4123.29. Apart from investments and the expenses set forth in R.C. 4123.30, the moneys in the state insurance fund may not be used for any purpose other than to provide compensation to employees and their dependents for death, injuries, or occupational disease occasioned in the course of such employee's employment, and may not be used for other purposes of the state. *See* Ohio Const. art. II, § 35; R.C. 4123.30; *see also Corrugated Container Co. v. Dickerson*, 171 Ohio St. 289, 170 N.E.2d 255 (1960) (because the state insurance fund is a trust fund, it is impermissible to transfer funds from that fund to the state's general fund). Also, moneys in the state insurance fund are deposited into a custodial fund of the Treasurer of State and disbursed by the Bureau of Workers' Compensation without an appropriation from the General Assembly. *See* Ohio Const. art. II, § 35; R.C. 4123.30; R.C. 4123.42; *see also* R.C. 113.11 ("[n]o money shall be paid out of a custodial fund of the treasurer

of state except on proper order to the treasurer of state by the officer authorized by law to pay money out of the fund"); R.C. 4123.44 (if insufficient funds are available to pay compensation or benefits, "the administrator may borrow from any available source and pledge as security a sufficient amount of bonds or other securities in which the state insurance fund is invested…. The bonds or other securities so pledged as security for such loans to the administrator shall be the sole security for the payment of the principal and interest of any such loan"); R.C. 4123.46 (the Bureau of Workers' Compensation shall disburse moneys from the state insurance fund); rule 4123-9-03(C) (the financial division of the Bureau of Workers' Compensation shall assist "the administrator in receiving and disbursing funds from the state insurance fund").

Because the moneys of the state insurance fund are held in trust for employers and employees in a custodial fund of the Treasurer of State, such moneys are not moneys belonging to the state for purposes of Ohio Const. art. VIII, § 4. *See* R.C. 113.05 (custodial funds of the Treasurer of State "are required by law to be kept in the custody of the treasurer of state but are not part of the state treasury…. Assets of the state treasury shall not be commingled with assets of the custodial funds of the treasurer of state"). Therefore, a partnership formed by the Administrator of Workers' Compensation and a private corporation in which property or money belonging to the state insurance fund is used to construct and operate a parking garage does not result in a union of the resources of the state with private enterprise. The formation of such a partnership for the investment of the surplus or reserve of the state insurance fund thus does not violate Ohio Const. art. VIII, § 4, provided that no moneys belonging to the state will ever be obligated for the purpose of reimbursing the state insurance fund for any losses it incurs as a result of such investment.

This conclusion is buttressed by the language of R.C. 4123.44. As explained above, R.C. 4123.44 authorizes the Administrator of Workers' Compensation to form a partnership with a private corporation to invest the surplus or reserve of the state insurance fund. It is a codified rule of statutory construction that laws enacted by the General Assembly are presumed to be constitutional. R.C. 1.47(A); *see State ex rel. Lukens v. Brown*, 34 Ohio St. 2d 257, 298 N.E.2d 132 (1973). Moreover, it is axiomatic that R.C. 4123.44 was enacted in light of Ohio Const. art. VIII, § 4. *See Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1900) ("[t]he presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject").

Accordingly, the General Assembly was cognizant of the provisions of Ohio Const. art. VIII, § 4 when it created the state insurance fund as a trust fund to be used exclusively to provide compensation to employees and their dependents for death, injuries, or occupational disease occasioned in the course of such employee's employment. The fund consists of premiums paid by employers, not appropriations from the General Assembly or moneys raised by taxation. Ohio Const. art. II, § 35; R.C. 4123.29. The General Assembly thus segregated the premiums paid by employers into the fund from the moneys of the state. Such action by the General Assembly indicates that the General Assembly does not intend for the moneys of the state insurance fund to be classified as moneys belonging to the state for purposes of Ohio Const. art.

VIII, § 4, or for the state to bear the burden of any losses suffered by that fund. Therefore, it is our conclusion that the formation of a partnership by the Administrator of Workers' Compensation and a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage does not violate Ohio Const. art. VIII, § 4, provided that no moneys belonging to the state will ever be obligated for the purpose of reimbursing the state insurance fund for any losses it incurs as a result of such investment.

Finally, we must determine whether the foregoing investment is appropriate or permissible under R.C. 4123.44. *See generally Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 379, 329 N.E.2d 693, 695 (1975) (a state agency "has only such authority, either express or implied, as conferred upon it by the General Assembly"). R.C. 4123.44 does not require the Administrator of Workers' Compensation to invest the surplus and reserve of the state insurance fund in certain specified classifications of investments prescribed by the General Assembly. *Cf.* R.C. 135.14 (setting forth a list of permissible investments for subdivisions); R.C. 135.35 (listing the specific investments in which a county may invest its inactive moneys). Instead, the General Assembly has provided that, when the Administrator discharges his investment duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, the Administrator may invest the surplus and reserve of the state insurance fund in any investment that is in accordance with the investment objectives, policies, and criteria established by the Workers' Compensation Oversight Commission pursuant to R.C. 4121.12.[3] R.C. 4123.44; *accord* rule 4123-9-03(D); *see* 1989 Op. Att'y Gen. No. 89-033

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[3] R.C. 4121.12 provides for the creation and operation of the Workers' Compensation Oversight Commission. Pursuant to R.C. 4121.12(F)(6), the Commission is required to do the following:

> Establish objectives, policies, and criteria for the administration of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines, and monitor the administrator's progress in implementing the objectives, policies, and criteria on a quarterly basis. The commission shall publish the objectives, policies, and criteria no less than annually and shall make copies available to interested parties. The commission shall prohibit, on a prospective basis, specific investment authority it finds to be contrary to its investment objectives, policies, and criteria.
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> The investment policy in existence on March 7, 1997, shall continue until the commission approves objectives, policies, and criteria for the administration of the investment program pursuant to this section.

(syllabus, paragraph three). *See generally* 1993 Op. Att'y Gen. No. 93-054 at 2-258 ("any decision with respect to the investment of moneys of a governmental entity must be made in accordance with the fiduciary standards generally applicable to the investment of public moneys by such entity"); 1992 Op. Att'y Gen. No. 92-025 at 2-89 ("it is reasonable to conclude that in those instances where the General Assembly has granted statutory authority to a department, official or board of a county to hold public funds independently of the county treasury, such authority also impliedly includes the authority to deposit and/or invest those funds in a manner which is reasonably calculated to safeguard such funds while maintaining and/or enhancing the principal, pending use of such funds in accordance with the statutes governing their application").

Accordingly, pursuant to R.C. 4123.44, if the Administrator of Workers' Compensation determines that the formation of a partnership with a private corporation for the purpose of investing state insurance fund moneys in a project to construct and operate a parking garage is reasonable and prudent and in accordance with the investment objectives, policies, and criteria established by the Workers' Compensation Oversight Commission, the Administrator may invest such moneys in the project. *See* 1989 Op. Att'y Gen. No. 89-033. In determining whether this particular investment is reasonable and prudent, the Administrator must consider the risks and possible benefits of the investment. *See* 1993 Op. Att'y Gen. No. 93-054 at 2-259 ("the appropriateness of any particular investment in participating mortgage-backed securities such as those described in your request will depend upon a careful analysis of all relevant factors"). For example, the Administrator is directed to minimize the risk of large losses to the state insurance fund, R.C. 4123.44, and thus should consider the amount of money at risk along with the likelihood of success and the extent to which the balance of the fund may be benefited or endangered. *See generally* 1989 Op. Att'y Gen. No. 89-033 at 2-154 (the need to carefully consider the entire circumstance of the proposed sale of investment properties at a price that is less than the costs that were incurred in their acquisition and development cannot be emphasized too strongly).

As a practical matter, whether a particular investment is reasonable and prudent, and in accordance with the investment objectives, policies, and criteria established by the Workers' Compensation Oversight Commission, presents questions of fact that can only be resolved on a case-by-case basis. *See* 1989 Op. Att'y Gen. No. 89-033 at 2-153 (whether the decision to approve the sale of properties at the lower market value price "should be characterized as reasonable and prudent, or unreasonable and imprudent, will depend upon the factual circumstances that prevail at the time the proposed sale is consummated"). An opinion of the Attorney General cannot resolve questions of fact or provide advice with respect to disputed factual matters. 1986 Op. Att'y Gen. No. 86-076 at 2-422.

Therefore, it is our conclusion that, pursuant to R.C. 4123.44, the Administrator of Workers' Compensation may form a partnership with a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage, provided such investment is in accordance with the investment

objectives, policies, and criteria established by the Workers' Compensation Oversight Commission. However, in making such an investment, the Administrator must discharge his investment duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Your second question asks, if the Bureau of Workers' Compensation is not authorized to form a partnership with a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage, whether the Bureau may lease to the private corporation the land on which the parking garage is to be constructed. Because we have determined that the Bureau is authorized by R.C. 4123.44 to form such a partnership, it is unnecessary for us to answer your second question.

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. The formation of a partnership by the Administrator of Workers' Compensation and a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage does not violate Ohio Const. art. VIII, § 4, provided that no moneys belonging to the state will ever be obligated for the purpose of reimbursing the state insurance fund for any losses it incurs as a result of such investment.

2. Pursuant to R.C. 4123.44, the Administrator of Workers' Compensation may form a partnership with a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage, provided such investment is in accordance with the investment objectives, policies, and criteria established by the Workers' Compensation Oversight Commission. However, in making such an investment, the Administrator must discharge his investment duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 1, 1999

James Conrad, Administrator
Ohio Bureau of Workers' Compensation
30 West Spring Street
Columbus, Ohio 43215-2256

SYLLABUS: 99-002

1. The formation of a partnership by the Administrator of Workers' Compensation and a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage does not violate Ohio Const. art. VIII, § 4, provided that no moneys belonging to the state will ever be obligated for the purpose of reimbursing the state insurance fund for any losses it incurs as a result of such investment.

2. Pursuant to R.C. 4123.44, the Administrator of Workers' Compensation may form a partnership with a private corporation for the purpose of investing a portion of the surplus or reserve of the state insurance fund in a project to construct and operate a parking garage, provided such investment is in accordance with the investment objectives, policies, and criteria established by the Workers' Compensation Oversight Commission. However, in making such an investment, the Administrator must discharge his investment duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.