

OPINION NO. 93-011

Syllabus:

1. Pursuant to R.C. 4123.411(B), for all injuries and disabilities occurring on or after January 1, 1987, the Administrator of Workers' Compensation

is required to levy an assessment against all employers at a rate per one hundred dollars of payroll that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out R.C. 4123.412-.418 for the period for which the assessment is levied.

2. R.C. 4123.411(B) does not authorize the Administrator of Workers' Compensation to levy the assessment therein described at a rate that will create a reserve within the disabled workers' relief fund.

**To: J. Wesley Trimble, Administrator, Bureau of Workers' Compensation
Columbus, Ohio**
By: Lee Fisher, Attorney General, May 17, 1993

You have requested an opinion regarding the appropriate method of levying assessments under R.C. 4123.411(B) with respect to the disabled workers' relief fund. Created in 1953 by R.C. 4123.412,¹ *see* 1953-1954 Ohio Laws 506, 508 (Am. Sub. H.B. 105, eff. Oct. 21, 1953), the disabled workers' relief fund "was designed to subsidize the monthly income of permanently and totally disabled workers whenever it fell below a certain statutory minimum." *State ex rel. Martin v. Connor*, 9 Ohio St. 3d 213, 213, 459 N.E.2d 889, 890 (1984). A disabled worker who is eligible to participate in that fund, *see* R.C. 4123.413, receives an additional monthly benefit, the amount of which is determined in accordance with the formula set forth in R.C. 4123.414. *See Thompson v. Industrial Commission of Ohio*, 1 Ohio St. 3d 244, 244, 438 N.E.2d 1167, 1167 (1982) ("[g]enerally speaking, disabled workers are eligible for a [disabled workers' relief fund] payment if their combined workers' compensation and Social Security disability benefits amount to less than a statutorily mandated base"). *See also Wean Incorporated v. Industrial Commission of Ohio*, 52 Ohio St. 3d 266, 557 N.E.2d 121 (1990).

**Authority of the Administrator of Workers' Compensation to Levy
Assessments Under R.C. 4123.411**

Assessments against the payrolls of all employers are the primary sources of the moneys that constitute the disabled workers' relief fund. R.C. 4123.411 empowers the Administrator

¹ R.C. 4123.412 reads as follows:

For the relief of persons who are permanently and totally disabled as the result of injury or disease sustained in the course of their employment and who are receiving workers' compensation which is payable to them by virtue of and under the laws of this state in amounts, the total of which, when combined with disability benefits received pursuant to the social security act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code, there is hereby created a separate fund to be known as the disabled workers' relief fund, which fund shall consist of the sums that are from time to time appropriated by the general assembly and made available to the order of the bureau of workers' compensation to carry out the objects and purposes of sections 4123.412 to 4123.418 of the Revised Code. The fund shall be in the custody of the treasurer of the state and disbursements therefrom shall be made by the bureau to those persons entitled to participate therein and in amounts to each participant as is provided in section 4123.414 of the Revised Code.

of Workers' Compensation to levy those assessments. R.C. 4123.411 reads, in part, as follows:

(A) For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the administrator of workers' compensation, subject to the approval of the workers' compensation board, shall levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, such rate to be determined annually for each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount estimated by the administrator to be necessary to carry out such sections for the period for which the assessment is levied. In the event the amount produced by the assessment is not sufficient to carry out such sections the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to section 4123.44 of the Revised Code.

Assessments shall be levied according to the following schedule:

(1) Private fund employers, except self-insured employers--in January and July of each year upon gross payrolls of the preceding six months;

(2) Counties and taxing district employers therein, except self-insured county hospitals--in January of each year upon gross payrolls of the preceding twelve months;

(3) The state as an employer--in January, April, July, and October of each year upon gross payrolls of the preceding three months.

Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules adopted by the administrator pursuant to division (E) of section 4121.13 of the Revised Code.

The moneys derived from the assessment provided for in this section shall be credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall establish by rule classifications of employers within divisions (A)(1) to (3) of this section and shall determine rates for each class so as to fairly apportion the costs of carrying out sections 4123.412 to 4123.418 of the Revised Code.

(B) For all injuries and disabilities occurring on or after January 1, 1987, the administrator, for the purposes of carrying out sections 4123.412 to 4123.418 of the Revised Code, shall levy an assessment against all employers at a rate per one hundred dollars of payroll, such rate to be determined annually for each classification of employer in each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount estimated by the administrator to be necessary to carry out such sections for the period for which the assessment is levied.

Amounts assessed in accordance with this division shall be billed at the same time premiums are billed and credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall determine the rates for each class in the same manner as it fixes the rates for premiums pursuant to section 4123.29 of the Revised Code.

R.C. 4123.411(A) thus directs the Administrator of Workers' Compensation to levy an assessment against all employers at a rate, within the limits specified, that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out the provisions of R.C. 4123.412-.418 for the period for which that assessment is made. R.C. 4123.411(A) also provides that in the event the amount produced by the assessment is not

sufficient to carry out those provisions, the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to R.C. 4123.44.²

R.C. 4123.411(B), which is the focus of your inquiry, authorizes a second assessment, in addition to that prescribed by R.C. 4123.411(A), against all employers for all injuries and disabilities occurring on or after January 1, 1987.³ As in the case of R.C. 4123.411(A), such assessment is to be levied at a rate that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out R.C. 4123.412-.418 for the period for which that assessment is levied. Unlike R.C. 4123.411(A), however, R.C. 4123.411(B) does not authorize the use of income produced as a result of investments made pursuant to R.C. 4123.44 to make up any deficiency in the amount of moneys raised by that assessment. In addition, R.C. 4123.411(B) states that the Administrator shall determine the rates of those assessments for each class of employer in the same manner as it fixes the rates for premiums pursuant to R.C. 4123.29.⁴

You wish to know whether the assessment under R.C. 4123.411(B) should be levied at a rate that will maintain an appropriate actuarial reserve for future benefit payments, or whether the assessment should be levied only at a rate that will provide adequate cash to make current supplemental benefit payments. You have referred to the language differences in R.C. 4123.411(A) and R.C. 4123.411(B) mentioned above, and you suggest that those differences

² R.C. 4123.44(A) authorizes the Administrator of Workers' Compensation, with the approval of the Workers' Compensation Board and the Industrial Commission, to invest any of the surplus or reserve of the state insurance fund, *see* R.C. 4123.30; R.C. 4123.34(B), in any of the bonds, notes, certificates of indebtedness, mortgage notes, or other obligations or securities thereafter described.

³ The provisions that appear in division (B) of R.C. 4123.411 were enacted by the General Assembly in 1985-1986 Ohio Laws, Part I, 718, 756 (Am. Sub. S.B. 307, eff. Aug. 22, 1986). That legislation also amended the provisions of former R.C. 4123.411 and redesignated those provisions as R.C. 4123.411(A).

⁴ R.C. 4123.29(A) states as follows:

The administrator of workers' compensation, subject to the approval of the workers' compensation board, shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of the classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in this chapter, and to maintain a state insurance fund from year to year. The rates shall be set at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the commission, is not an adequate measure for determining the premium to be paid for the degree of hazard, the administrator may determine the rates of premium upon such other basis, consistent with insurance principles, as is equitable in view of the degree of hazard, and whenever in this chapter reference is made to payroll or expenditure of wages with reference to fixing premiums, the reference shall be construed to have been made also to such other basis for fixing the rates of premium as the administrator may determine under this section.

The administrator in setting or revising rates shall furnish to employers an adequate explanation of the basis for the rates set.

may justify setting rates under R.C. 4123.411(B) at a level that will produce a reserve within the disabled workers' relief fund for supplemental benefit payments.

R.C. 4123.411(A)

In 1981 Op. Att'y Gen. No. 81-034 the Attorney General addressed the question of whether the Industrial Commission should levy assessments under R.C. 4123.411,⁵ the provisions of which now appear in R.C. 4123.411(A), *see* note three, *supra*, at a rate sufficient to create and maintain a reserve for payments from the disabled workers' relief fund. Op. No. 81-034 advised that the provisions of R.C. 4123.411 neither required nor authorized the Industrial Commission to maintain a reserve for those payments. The opinion stated that this conclusion was warranted by the plain language of R.C. 4123.411 directing the Industrial Commission to levy an assessment, within the limits therein specified, which would produce an amount "no greater than" the amount estimated by the Commission to be necessary to carry out R.C. 4123.412-.418 "for the period for which the assessment is levied." On this point Op. No. 81-034 reasoned at 2-132 and 2-133 as follows:

A well-settled principle of statutory construction is that words in a statute are to be given their plain and ordinary meaning unless it is otherwise clearly indicated. *Crane v. Comm'r of Internal Revenue*, 331 U.S. 1 (1947); *Lake County National Bank v. Kosydar*, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1973); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948).

Applying this principle to the language of R.C. 4123.411, I must conclude that the Commission is required to "levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, beginning July 1, 1980" but that, within these limits, the Commission has no authority to levy an assessment for the Disabled Workers' Relief fund which would produce an amount greater than the amount necessary to carry out the provisions of R.C. 4123.412 to 4123.418 for the period for which the assessments are levied. The legislative intent is clearly expressed in the statute. To levy assessments at a rate which would be sufficient to create a surplus or a reserve would be to exceed the statutory authority contained in R.C. 4123.411.

Op. No. 81-034 also noted that, when the General Assembly intended that the Industrial Commission fix assessment or premium rates at a level that would guarantee a reserve for, and thus the solvency of, a particular fund, it so declared in express language that was clear and unequivocal. As examples in that regard, Op. No. 81-034 referred to the language in R.C. 4123.29 that required the Industrial Commission to set premium rates "at a level that assures the solvency of the [state insurance] fund," and the language in R.C. 4123.34 that directed the Industrial Commission to fix and maintain the lowest possible rates of premium "consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus." *Id.* at 2-131 and 2-132.⁶

⁵ 1989-1990 Ohio Laws, Part II, 3197, 3338 (Am. Sub. H.B. 222, eff. Nov. 3, 1989) amended R.C. 4123.411(A) and (B) for the purpose of transferring from the Industrial Commission to the Administrator of Workers' Compensation the authority to levy assessments for the disabled workers' relief fund.

⁶ 1989-1990 Ohio Laws, Part II, 3197, 3315, 3319 (Am. Sub. H.B. 222, eff. Nov. 3, 1989) similarly amended R.C. 4123.29 and R.C. 4123.34 for the purpose of transferring from

R.C. 4123.411(B)

Similarly, R.C. 4123.411(B) does not authorize the Administrator of Workers' Compensation to levy the assessment therein described at a rate that will produce an actuarial reserve to be used for supplemental benefit payments from the disabled workers' relief fund. Rather, the assessment under R.C. 4123.411(B) is to be levied at a rate that will produce an amount that is sufficient to make supplemental benefit payments during the period for which the assessment is levied. This conclusion is compelled by the first sentence of R.C. 4123.411(B) that directs the Administrator of Workers' Compensation to levy an assessment "which will produce an amount no greater than the amount estimated by the [A]dministrator to be necessary to carry out [R.C. 4123.412-.418] for the period for which the assessment is levied." This language of R.C. 4123.411(B) is clear and unambiguous, and thus warrants no further interpretation. *See generally State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927) (statutory language that is plain and definite need only be read in order to ascertain its meaning). The logical and reasonable inference from the foregoing language is that the Administrator of Workers' Compensation is not authorized to levy the assessment under R.C. 4123.411(B) at a rate that will produce a reserve for supplemental benefit payments that are to be made other than during the period for which the assessment is levied.

The language differences in R.C. 4123.411(A) and R.C. 4123.411(B) identified previously furnish no support for the opposite conclusion with respect to this particular issue. The General Assembly expressly permits assessment deficiencies under R.C. 4123.411(A) to be satisfied with the income that is produced from investments made pursuant to R.C. 4123.44, but does not otherwise permit the same with respect to assessment deficiencies under R.C. 4123.411(B). This does not mean, however, that one may thereby infer authority on the part of the Administrator of Workers' Compensation to levy the assessment under R.C. 4123.411(B) at a rate that will produce a reserve, and thus foreclose the possibility of an assessment deficiency at a future date. Rather, it simply means that the General Assembly has not authorized the use of income produced from investments made pursuant to R.C. 4123.44 to satisfy assessment deficiencies that may occur under R.C. 4123.411(B).

The reference to R.C. 4123.29 in the concluding sentence of R.C. 4123.411(B) also cannot be used to infer authority on the part of the Administrator of Workers' Compensation to levy the assessment under R.C. 4123.411(B) at a rate that will create a reserve within the disabled workers' relief fund for supplemental benefit payments. In that regard R.C. 4123.411(B) states that the Administrator shall determine the assessment rates for each class of employer "in the same manner as it fixes the rates for premiums pursuant to [R.C. 4123.29]." R.C. 4123.29 in turn authorizes the Administrator to fix the premium rates for employer contributions to the state insurance fund, and at a level "that assures the solvency of the fund," R.C. 4123.29(A). The language of R.C. 4123.411(B) that refers to R.C. 4123.29 reasonably can mean that the Administrator shall determine assessment rates for the disabled workers' relief fund by using risk classifications and calculation methods that are similar to those he employs under R.C. 4123.29. It does not further mean, however, that R.C. 4123.29(A)'s solvency directive is to be incorporated into R.C. 4123.411(B), and construed as empowering the Administrator of Workers' Compensation to levy the assessment under R.C. 4123.411(B) at a rate that will create a supplemental benefit payment reserve within the disabled workers' relief fund. Indeed, to do so would nullify and render ineffective R.C. 4123.411(B)'s directive that

the Industrial Commission to the Administrator of Workers' Compensation the authority to set premium rates and risk classifications under those two sections.

the Administrator shall levy that assessment at a rate that will produce an amount no greater than the amount estimated to be necessary to carry out R.C. 4123.412-.418. *See* R.C. 1.47(B) ("[i]n enacting a statute, it is presumed that...[t]he entire statute is intended to be effective").

Conclusion

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

1. Pursuant to R.C. 4123.411(B), for all injuries and disabilities occurring on or after January 1, 1987, the Administrator of Workers' Compensation is required to levy an assessment against all employers at a rate per one hundred dollars of payroll that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out R.C. 4123.412-.418 for the period for which the assessment is levied.
2. R.C. 4123.411(B) does not authorize the Administrator of Workers' Compensation to levy the assessment therein described at a rate that will create a reserve within the disabled workers' relief fund.