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AM. SUB. H. B. 831, 103rd GENERAL ASSEMBLY—CONSTITUTES AN EXCEPTION TO AND TAKES PRECEDENCE OVER SECTIONS 4123.341, 4123.342, R.C., RELATING TO STATUS OBLIGATION FOR COST OF ADMINISTRATION OF WORKMEN'S COMPENSATION LAW.

SYLLABUS:

1. The provisions of Amended Substitute House Bill No. 831 of the 103rd General Assembly, effective June 30, 1959, as pertaining to the costs of administration of the workmen's compensation law, constitute an exception to, and take precedence over, the provisions of Sections 4123.341 and 4123.342, Revised Code, relating to the state's obligation for such costs, and the provisions of such bill allow payments to be made from the state insurance fund to the general fund in an amount equal to one hundred per cent of the appropriations made in such bill for the costs of such administration.

2. The one-third of administrative costs formerly paid by the state pursuant to Sections 4123.341 and 4123.342, Revised Code, and pursuant to former appropriation acts may not be assessed against employers under authority of Amended Substitute House Bill No. 831 of the 103rd General Assembly but must necessarily be absorbed by the state insurance fund.

Columbus, Ohio, August 12, 1959

Hon. James H. Maloon, Director of Finance
Department of Finance, Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Several questions have arisen as to a potential conflict that may exist between the provisions of Am. Sub. H. B. No. 831 as enacted by the 103rd General Assembly and sections 4123.341 and 4123.342 of the Revised Code.

“Under the sections of the Revised Code, which were enacted in 1953, one-third of the administrative cost incurred relative to workmen’s compensation is to be borne by the state. The remaining two-thirds is allocated among all other employees subject to the Act.

“In past appropriation acts, these provisions have been followed in that two-thirds of the amount of the appropriations for workmen’s compensation have been paid into the General Fund.

“Notwithstanding the policy of the sections of the Revised Code, the General Assembly in the current General Appropriation Act, Am. Sub. H. B. 831, provided that an amount equal to one hundred per cent of the appropriations for workmen’s compensation purposes shall be paid to the General Fund.

“The questions raised are :

“(1) Do the provisions of H. B. No. 831, which are clearly contrary to the policy set forth earlier in the Revised Code, allow payments to be made in an amount equal to one hundred per cent of the appropriations from the State Insurance Fund to the General Fund.

“(2) Assuming that the provisions of H. B. No. 831 prevail, may this additional one-third of administrative cost be assessed against employers as provided in section 4123.342 or must this additional amount be absorbed by the State Insurance Fund.”

As you note in your request, certain provisions of Amended Substitute House Bill No. 831 of the 103rd General Assembly, effective June 30, 1959, are in conflict with certain provisions of Sections 4123.341 and 4123.342, Revised Code.

Division A of Section 4123.341, Revised Code, referring to administrative costs of workmen's compensation reads:

"A. In addition to the contribution required of the state under the provisions of sections 4123.39 and 4123.40 of the Revised Code, the state will appropriate to the industrial commission such sum as the General Assembly shall determine to be necessary. It is hereby declared *that one-third of said administrative costs should be paid from general revenue* in order to discharge the state's obligation to render justice to employees and employers, insure prompt determination and payment of claims and safeguard the solvency of the state insurance fund and to discharge its obligation as an employer to contribute to the cost of administration." (Emphasis added)

Section 4123.342, Revised Code, provides in part:

"* * * The industrial commission shall collect the amount allocated to each class by assessing the employers in such class in the same manner as employers are assessed under the provisions of section 4123.34 of the Revised Code for the maintenance of the solvency of the state insurance fund. To the extent that the moneys so collected by the industrial commission in any fiscal biennium of the state *equal but do not exceed two-thirds of the sum appropriated by the General Assembly for administrative costs of the industrial commission for such biennium* such moneys shall be paid into the general revenue fund of the state and any remainder shall be retained in the state insurance fund and applied to reduce the amount so collected during the next biennium. The provisions of sections 4123.41, 4123.35 and 4123.37 of the Revised Code shall be applicable to the collection of such assessments from public and private employers respectively." (Emphasis added)

The effect of these provisions is to require the state to pay one-third of the administrative costs of the workmen's compensation law, and a review of past appropriation acts shows that such requirement was followed in such acts.

Amended Substitute House Bill No. 831, *supra*, makes general appropriations for the biennium beginning July 1, 1959 and ending June 30, 1961, including appropriation of funds for the administration of the workmen's compensation law. The money is appropriated from the general revenue fund and appropriations appear in three instances in the act. After each such appropriation, however, a provision appears as follows:

"The state insurance fund shall pay into the general fund of the state of Ohio, one-fourth of the amount of such appropriation

for each fiscal year on or before August 15, November 15, February 15, and May 15 of each fiscal year. The amount of any unencumbered balances remaining in such appropriation as of June 30, 1961 shall be reimbursed to the state insurance fund from the general fund." (After "Total Attorney General Workmen's Compensation Legal Services"; after "Total Treasurer of State Workmen's Compensation"; after "Total Bureau of Workmen's Compensation.")

The effect of these provisions is that the entire cost of the administration of the workmen's compensation law is paid by the state insurance fund. Thus, there is a definite conflict with the provisions of Sections 4123.341 and 4123.342, *supra*, noted above, the question arising as to which provisions govern.

Sections 4123.341 and 4123.342, *supra*, were both enacted by Amended Substitute House Bill No. 105, effective October 21, 1953. As noted earlier, Amended Substitute House Bill No. 831, *supra*, became effective on June 30, 1959. (As an appropriation act this measure will remain in effect until July 1, 1961.) Thus, Amended Substitute House Bill No. 831, *supra*, as a specific law and as the latest expression of the legislature, should take precedence over provisions of Sections 4123.341 and 4123.342, *supra*, where there is a conflict with such sections.

In *State, ex rel. Elliott v. Connar*, 123 Ohio St., 310 at page 314, in ruling on a situation similar to that at hand, the Supreme Court of Ohio stated:

"* * * The appropriation act is not only special in character, but later in point of time of enactment. The authorities are therefore quite uniform that special provisions, and more especially those which are enacted later than general provisions, must control. The case most nearly parallel is *State, ex rel. Steller, v. Zangerle, Aud.*, 100 Ohio St., 414, 126 N. E., 413. The first paragraph of the per curiam opinion states:

" 'A special statute covering a particular subject-matter must be read as an exception to a statute covering the same and other subjects in general terms.'

"The same principle has been applied in numerous other decisions of this court, among which may be mentioned *Flury v. Central Publishing House of Reformed Church of U. S.*, 118 Ohio St., 154 160 N. E., 679; *Perkins v. Bright*, 109 Ohio St., 14, 141 N. E., 689, and *Northwestern Ohio Natural Gas Co. v. City of Tiffin*, 59 Ohio St., 420, 54 N. E., 77. This principle is so well settled that further citation of authority is unnecessary.

* * *

One of my predecessors, in Opinion No. 900, Opinions of the Attorney General for 1939, page 1229, in considering a question similar to that here before us, held that provisions of the then current appropriation act took precedence over conflicting sections of the General Code, the syllabus stating:

“Under the law of Ohio, including Sections 1465-60, 1465-64, 1345-2 and 1345-3, giving proper consideration to the General Appropriation Act of the 93rd General Assembly, the administrator of the Bureau of Unemployment Compensation is obligated to pay from the Unemployment Compensation Administrative Fund, to the Industrial Commission, premiums covering employees of such Bureau.”

Another predecessor, in Opinion No. 1094, Opinions of the Attorney General for 1957, dealt with a conflict between the provisions of the Revised Code relating to the unemployment trust fund and the provisions of the capital improvement act enacted by the 102nd General Assembly. In that instance, Section 4141.09, Revised Code, limited the purposes for which expenditures could be made from the fund while the appropriation act allowed expenditures of a different type to be made therefrom. The then Attorney General held that the appropriation act, although limited in its operative effect to a period of two years, was “nevertheless, during that period, a law of force and dignity equal to every other state law.” The opinion then went on to hold that the provisions of the appropriation act constituted an exception to the general law where conflicts occurred.

Answering your first question, therefore, I am of the opinion that the provisions of Amended Substitute House Bill No. 831, *supra*, as pertaining to the costs of administration of the workmen’s compensation law, constitute an exception to, and take precedence over, the provisions of Sections 4123.341 and 4123.342, Revised Code, relating to the state’s obligation for such costs, and do allow payments to be made from the state insurance fund to the general fund in an amount equal to one hundred per cent of the appropriations made in such bill for the costs of such administration.

Your second question asks whether the one-third of administrative costs formerly paid by the state may be assessed against employers or whether this additional amount must be absorbed by the state insurance fund. In this regard you will note that the provisions of Section 4123.342, Revised Code, set forth above, provide that the money collected from

employers shall not exceed two-thirds of the administrative costs. You will also note that the provisions of Amended Substitute House Bill No. 831, *supra*, set forth above, do not relate to the allocation of costs but only to the payments to be made from the state insurance fund into the general fund of the state. Thus, I do not believe that said provisions of the appropriation act could be construed to affect the limitation of costs allocation for employers as provided by Section 4123.342 of the Revised Code. One-third of administrative costs, therefore, must necessarily be absorbed by the state insurance fund.

Accordingly, it is my opinion and you are advised:

1. The provisions of Amended Substitute House Bill No. 831 of the 103rd General Assembly, effective June 30, 1959, as pertaining to the costs of administration of the workmen's compensation law, constitute an exception to, and take precedence over, the provisions of Sections 4123.341 and 4123.342, Revised Code, relating to the state's obligation for such costs, and the provisions of such bill allow payments to be made from the state insurance fund to the general fund in an amount equal to one hundred per cent of the appropriations made in such bill for the costs of such administration.

2. The one-third of administrative costs formerly paid by the state pursuant to Sections 4123.341 and 4123.342, Revised Code, and pursuant to former appropriation acts may not be assessed against employers under authority of Amended Substitute House Bill No. 831 of the 103rd General Assembly but must necessarily be absorbed by the state insurance fund.

Respectfully,

MARK McELROY

Attorney General