

## OPINION NO. 77-017

**Syllabus:**

An agreement between an independent contractor and three public utility companies, whereby the utility companies agree to (1) reimburse the independent contractor for all Worker's Compensation costs it may pay out during the course of the project and (2) assume the independent contractor's obligation to pay future Worker's Compensation benefits upon completion of the project, is prohibited by R.C. 4123.82 and is therefore void.

To: William W. Johnston, Chairman, Industrial Commission of Ohio, Columbus, Ohio

By: William J. Brown, Attorney General, April 4, 1977

I have before me your request for my opinion concerning the validity under R.C. 4123.82 of an agreement between several utilities and an independent construction contractor, whereby the utility companies would undertake to reimburse and indemnify the contractor for all liability it incurs as an employer for Worker's Compensation claims. Specifically you ask:

"Do contract procedures pursued by Kaiser Engineers, Inc., (SI-2859) constitute violation of Ohio Statute prohibiting private carriers from underwriting Workmen's Compensation insurance in Ohio."

The Ohio statute referred to in your request, R.C. 4123.82, provides in part:

"(A) All contracts and agreements are void which undertake to indemnify or insure an employer against loss or liability for the payment of compensation to workmen or their dependents for death, injury, or occupational disease occasioned in the course of such workmen's employment, or which provide that the insurer shall pay such compensation, or which indemnify the employer against damages when the injury, disease, or death arises from the failure to comply with any lawful requirement for the protection of the lives, health, and safety of employees, or when the same is occasioned by the willful act of the employer or any of his officers or agents, or by which it is agreed that the insurer shall pay any such damages."

(Emphasis added.)

The Ohio Supreme Court considered the above language in Truscon Steel Co. v. Trumbull Cliffs Furnace Co., 120 Ohio St. 394 (1929) when it examined Section 1465-101, General Code,

the predecessor to R.C. 4123.82. After reviewing the statute the Court stated at page 397:

"Nothing could be clearer than that the legislature by the provisions of this section, indicated its intention to prevent the reimbursement of the employer for any amount paid pursuant to the provisions of the Workmen's Compensation Act to an injured employee."

The relevant holding in Truscon, supra, is contained in the first syllabus which reads as follows:

"1. An employer, whether self-insurer or otherwise, cannot recover from any source any sum to reimburse an amount paid under the Workmen's Compensation Law to injured employees, whether the injury results from the negligence of some third party, or otherwise."

See also Fischer Construction Co. v. Stroud, 175 Ohio St. 31 (1963).

As indicated in your letter your request is prompted by a specific situation. Attached to your request were copies of a number of documents including a letter dated March 8, 1971, addressed to the Industrial Commission of Ohio from The Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company and the Dayton Power and Light Company. The letter outlines the agreement in question and reads as follows:

"Kaiser Engineers, Inc. (Kaiser) has been selected to perform construction and construction management services at our Wm. H. Zimmer Nuclear Power Station, near Moscow, Ohio.

"During the course of its work for this project, Kaiser will pay, under its Certificate No. SI 2859, workmen's compensation benefits directly to employees entitled thereto. Kaiser will be reimbursed by our companies for all workmen's compensation costs and expenses.

"Upon completion by Kaiser of their work on this project, we will assume Kaiser's obligation for continuing payments to claimants who were employees of Kaiser and whose injuries were sustained as a result of these construction or construction management services." (Emphasis added.)

The second paragraph of the letter clearly states that Kaiser will be reimbursed by the utility companies for all Worker's Compensation costs it may actually pay out while working on the project. The third paragraph states that the utility companies have agreed that upon Kaiser's completion of the project the utilities will assume Kaiser's obligation to pay future Worker's Compensation benefits to any claimants who sustained injuries while employed by Kaiser on the project. By the agreement, Kaiser is guaranteed that it will not incur any loss or liability as a result of any Worker's Compensation benefits paid to its employees.

Division (B) of R.C. 4123.82 sets out exceptions to the prohibition in division (A), but the agreement you have described does not fall within the scope of such exceptions. Therefore, in view of the provisions of R.C. 4123.82 and the Supreme Court's decision in Truscon, supra, I must conclude that the agreement is prohibited by that section and is therefore void. To conclude otherwise would permit Kaiser to do business in Ohio without incurring any liability whatsoever for Worker's Compensation.

Therefore, in specific answer to your question it is my opinion, and you are so advised, that an agreement between an independent contractor and three public utility companies, whereby the utility companies agree to (1) reimburse the independent contractor for all Worker's Compensation costs it may pay out during the course of the project and (2) assume the independent contractor's obligation to pay future Worker's Compensation benefits upon completion of the project, is prohibited by R.C. 4123.82 and is therefore void.