

OPINION NO. 76-039**Syllabus:**

If the assessment levied against employers pursuant to R.C. 4123.411 is insufficient to carry out the provisions of R.C. 4123.412 to 4123.418 then the additional amount necessary must be provided from the income produced as a result of investments made pursuant to R.C. 4123.44.

**To: Kenneth E. Krouse, Administrator, Bureau of Workmen's Compensation,
Columbus, Ohio**

By: William J. Brown, Attorney General, May 18, 1976

I have before me your request for my opinion which presents the following questions:

- "(1) If the assessments against employers under 4123.411 are insufficient to carry out the provisions of Sections 4123.411 to 4123.418, may the deficit be met by an appropriation of the General Assembly under Section 4123.412 in lieu of using income from the state insurance fund?
- "(2) If the assessments against employers pursuant to 4123.411 are insufficient to carry out the provisions of Sections 4123.411 to 4123.418, may the deficit be provided from the income produced by investment of moneys of the state insurance fund, irrespective of the fact that 4123.415 indicates the contrary?"

In 1953 the 100th General Assembly created the Disabled Workmen's Relief Fund by enacting R.C. 4123.412, 4123.413, 4123.414, 4123.415, 4123.416, 4123.417 and 4123.418 (125 Laws of Ohio 506).

The manner of funding the Disabled Workmen's Relief Fund was provided for in R.C. 4123.412 which currently provides:

"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 workmen's 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 workmen's relief fund, which fund shall consist of such sums as are from time to time appropriated by the general assembly and made available to the order of the industrial commission to carry out the objects and purposes of sections 4123.412 to 4123.418, of the Revised Code. Said fund shall be in the custody of the treasurer of the state and disbursements therefrom shall be made by the industrial commission to those persons entitled to participate therein and in such amounts to each participant as is provided in section 4123.414 of the Revised Code."

(Emphasis added.)

In addition to providing for funding by appropriations by the General Assembly the Legislature also prohibited funding by disbursements from the State Insurance Fund. This prohibition is contained in R.C. 4123.415 which provides:

"Payments to a participant may be made from the disabled workmen's relief fund by separate check or may be made from said fund and from the state insurance fund by one check, but each such check on two funds shall be so written as to show plainly the payments made from each fund. No disbursement shall be made from the state insurance fund on account of any provision of sections 4123.412 to 4123.415, inclusive, of the Revised Code."

[Emphasis added.]

The wording of R.C. 4123.412 and 4123.415 has remained unchanged since 1953 with the exception that the threshold qualifying level in R.C. 4123.412 has periodically been amended from the twenty-five dollar level in 1953 to the present level of three hundred forty-two dollars.

By examining these two statutes it is clear that in 1953 the General Assembly intended that the Disabled Workmen's Relief Fund was to be funded by sums appropriated by the General Assembly and not by premiums contributed to the State Insurance Fund by employers.

However, in 1959 the 103rd General Assembly changed the method of funding the Disabled Workmen's Relief Fund by passing Amended Senate Bill No. 472 (128 Laws of Ohio 535). The purpose clause of that act read as follows:

"To enact section 4123.411 of the Revised Code to provide an assessment for the disabled workmen's relief fund."

R. C. 4123.411 became effective on August 1, 1959, and provided at that time:

"For the purpose of carrying out the provisions of sections 4123.412 to 4123.418, inclusive, of the Revised Code, the industrial commission shall, in January of each year, levy an assessment upon the aggregate gross payroll of all employers for the preceding calendar year at a uniform rate, not to exceed three cents per one hundred dollars of aggregate gross payroll, which will produce an amount no greater than the amount estimated by the commission to be necessary to carry out the provisions of sections 4123.412 to 4123.418, inclusive, of the Revised Code, for the current calendar year; provided, that the assessment in 1960 shall be upon such portion of the aggregate gross payroll of 1959 as is paid after the effective date of this section.

"The assessment herein provided for shall be collected from each employer as prescribed in rules and regulations adopted by the industrial commission pursuant to Division (E) of section 4123.13 of the Revised Code.

"The moneys derived from the assessment herein provided shall be credited to the disabled workmen's relief fund created by section 4123.412 of the Revised Code."

R. C. 4123.411 provided that the Industrial Commission shall levy an assessment upon all employers sufficient to produce an amount no greater than necessary to carry out the provisions of the Disabled Workmen's Relief Fund.

The obvious intent of this legislation was to shift the burden of funding from the taxpayers to the employers. This intent is further evidenced by the fact that on August 19, 1959, eighteen days after the enactment of R. C. 4123.411, R. C. 4123.419 became effective (128 Laws of Ohio 1332). At that time R. C. 4123.419 provided:

"The assessment rate established pursuant to section 4123.411 of the Revised Code, subject to the limits set forth therein, shall be adequate to provide the amounts estimated as necessary by the industrial commission to carry out the provisions of sections 4123.412

and 4123.418, inclusive, of the Revised Code, and in addition to provide moneys to reimburse the general revenue fund for moneys appropriated by section 2 of this act or by the 104th and succeeding General Assemblies for disabled workmen's relief. When such additional moneys are available in whole or part for the purpose of making such reimbursement, the director of finance shall certify such amount to the industrial commission who shall thereupon cause such moneys to be paid to the general revenue fund from the disabled workmen's relief fund."

R. C. 4123.419 was the first section of House Bill No. 1131. The second section of that Bill provided:

"SECTION 2. Whenever in the judgment of the director of finance, the amount to the credit of the disabled workmen's relief fund is not adequate to carry out the purposes of sections 4123.412 to 4123.418, inclusive, of the Revised Code, the director of finance shall certify the additional amounts needed to the auditor of state who shall thereupon issue his warrants in favor of the disabled workmen's relief fund for the amount so certified. Such warrants shall be drawn upon the sum of three million dollars which is hereby appropriated from any moneys in the state treasury to the credit of the general fund and not otherwise appropriated."

Prior to 1959, funding of the Disabled Workmen's Relief Fund was provided by appropriations made by the General Assembly pursuant to R.C. 4123.412. No provision was made for meeting any deficit that might exist. However, in 1959, the General Assembly changed the method of funding by enacting R.C. 4123.411. The new method of funding provided for an assessment to be levied against employers and the moneys derived therefrom to be credited to the Disabled Workmen's Relief Fund created by R.C. 4123.412.

The enactment of R.C. 4123.411, created an obvious conflict between that section and the funding provision of R.C. 4123.412. That conflict is resolved however, by examining the Rules of Construction contained in Chapter 1 of the General Provisions of the Ohio Revised Code. In the event two statutes are in conflict R.C. 1.52(A) provides:

"(A) If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails."

Application of this rule of statutory construction to these conflicting funding provisions requires that effect be given to the language in R.C. 4123.411 since that provision was enacted at a later date.

In addition to providing for a new method of funding, the 103rd General Assembly also provided a method of meeting any deficits that might occur by enacting R.C. 4123.419 and Section 2 of House Bill No. 1131 as set forth above. Section 2 appropriated the sum of three million dollars to be used in the event the amount levied against employers under R.C. 4123.411 was insufficient to carry out the purposes of R.C. 4123.412 to 4123.418, inclusive. However, R.C. 4123.419 requires that any additional amounts appropriated pursuant to Section 2 must later be reimbursed from the assessments levied against employers pursuant to R.C. 4123.411.

For the purposes of this discussion R.C. 4123.419 has basically remained unchanged since its enactment in 1959 and R.C. 4123.411 remained basically unchanged until December 2, 1975, when the General Assembly enacted Amended Substitute House Bill No. 714 (136 Laws of Ohio ____). R.C. 4123.411 now reads as follows:

"For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the industrial commission shall levy an assessment against all employers at a uniform rate, not to exceed five cents per one hundred dollars of payroll, beginning January 1, 1976, which will produce an amount no greater than the amount estimated by the commission 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:

"(A) Private fund employers--in January and July of each year upon gross payrolls of the preceding six months;

"(B) Counties and taxing district employers therein--in January of each year upon gross payrolls of the preceding twelve months;

"(C) The state as an employer--in July of each year upon gross payrolls of the preceding twelve months.

"Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules adopted by the industrial commission pursuant to division (E) of section 4123.13 of the Revised Code.

"The moneys derived from the assessment provided for in this section shall be credited

to the disabled workmen's relief fund created by section 4123.412 of the Revised Code."

[Emphasis added.]

By amending R.C. 4123.411, to include the above emphasized language, the General Assembly shifted the total burden of funding the Disabled Workmen's Relief Fund to the employers. This new language now requires that in event the amount of the assessment levied against employers is insufficient, then any deficit shall be provided from the income produced as a result of investments of the State Insurance Fund made pursuant to R.C. 4123.44.

Once again the new provision in R.C. 4123.411 creates a conflict with the language in R.C. 4123.419 and, as you point out in your request, with the language in R.C. 4123.415 which provides: "No disbursement shall be made from the State Insurance Fund on account of any provision of Section 4123.412 to 4123.415, inclusive, of the Revised Code". However, here again the application of the statutory rule of construction provided for in R.C. 1.52 (A), requires that the conflict be resolved in favor of the language contained in R.C. 4123.411, since it was enacted subsequent to R.C. 4123.419 and 4123.415.

Another rule of construction is contained in R.C. 1.47 which provides:

"In enacting a statute, it is presumed that:

"(A) Compliance with the constitutions of the state and of the United States is intended;

"(B) The entire statute is intended to be effective;

"(C) A just and reasonable result is intended;

"(D) A result feasible of execution is intended."

In applying this rule to the new language in R.C. 4123.411 I can only conclude that the Legislature intended that the provision be given effect and that should the assessment not be sufficient to produce the amount necessary to carry out the provisions of the Disabled Workmen's Relief Fund, then the additional amount necessary must come from the income produced from investments of the State Insurance Fund.

In specific answer to your questions, it is my opinion, and you are so advised, that if the assessment levied against employers pursuant to R.C. 4123.411 is insufficient to carry out the provisions of R.C. 4123.412 to 4123.418 then the additional amount necessary must be provided from the income produced as a result of investments made pursuant to R.C. 4123.44.