

OPINION NO. 78-043**Syllabus:**

- 1) The Superintendent of Insurance, under the terms of R.C. 1739.051, is authorized to retain attorneys, actuaries, accountants or other experts reasonably necessary to the hearing process for the purpose of presenting expert testimony at a hearing conducted thereunder.
- 2) A hospital service association involved in a hearing conducted pursuant to R.C. 1739.051 is obligated to meet the expenses incurred in the retention of such reasonably necessary expert witnesses, provided that any expenses thereby incurred may not exceed the sum fixed by the formula set forth in R.C. 1739.051.

To: Harry V. Jump, Director, Dept. of Insurance, Columbus, Ohio
By: William J. Brown, Attorney General, June 23, 1978

1. May the Department present its own witnesses at a public hearing held pursuant to Section 1739.051?
2. If your answer to (1) is in the affirmative, and the Department presents witnesses who are not employees of the Department, who must bear the expense of reimbursing such witnesses?

R.C. 1739.051 specifies a procedure to be followed when a hospital service association desires to take any of several actions, including the amendment of contractual relationships with hospitals or other health care facilities, the issuance or amendment of subscriber contracts, the establishment or change of any group

rating experience formula, and the establishment or change of any rate charged for any other subscriber contract. The procedure set forth in R.C. 1739.051 requires that a copy of any proposal concerning these actions be filed with the Superintendent of Insurance. The proposed contract, amendment, formula or rate shall not become effective until ninety days after filing unless the Superintendent gives his written approval before the expiration of ninety days.

R.C. 1739.051 further provides that where the Superintendent is not satisfied that every portion of any such contract, amendment, formula, or rate is lawful, fair and reasonable, he shall either so notify the association involved, which makes it unlawful for the association to go forward with the proposal, or shall set a date and time for a public hearing to commence no later than ninety days after filing.

R.C. 1739.051 provides for the conduct of such a hearing, in part, in the following terms:

The superintendent may retain at the association's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the superintendent's staff as shall be reasonably necessary to assist in the conduct of any public hearing under this section. Such expenses shall not exceed an amount equal to one one-hundredth of one per cent of the sum of premiums earned plus net realized investment gain or loss of such association as reflected in the most current annual statement on file with the superintendent. Any person retained shall be under the direction and control of the superintendent and shall act in a purely advisory capacity. The superintendent shall, within thirty days after the commencement of a hearing issue an order approving any proposed contract, amendment, formula, or rate if he finds it to be lawful, fair, and reasonable, or approving only that portion of a proposed contract, amendment, formula, or rate which he finds to be lawful, fair, and reasonable, or disapproving any proposed contract, amendment, formula, or rate if he finds it otherwise, or withdrawing his approval of any existing contract, amendment, formula, rate, or any portion thereof on any of the grounds stated in this section. Any action by the superintendent following a public hearing shall be effected by written order which shall state the grounds for disapproval.

Any action taken or order issued by the superintendent pursuant to this section may be appealed by the association as provided for in section 119.12 of the Revised Code.

It is apparent, under the terms of R.C. 1739.051, that the Superintendent is authorized to retain certain experts and that a hospital service association involved in a proceeding thereunder is responsible, subject to the limits outlined above, for the expense of retaining the experts necessary for the conduct of the hearing. Your questions, therefore, center upon a determination of whether the giving of testimony and evidence may be characterized, under the terms of R.C. 1739.051, as assisting in the conduct of a hearing.

While experts such as actuaries and accountants might be useful to a hearing in some other capacity, the usefulness of such experts in a proceeding such as that prescribed under R.C. 1739.051 lies primarily in the evaluation and assessment made possible by the application of unique, professional skills. Because the reason, intent and spirit of law will generally prevail over the literal import of the terms employed, *Slater v. Cave*, 3 Ohio St. 80 (1853), I am of the opinion that the terms of R.C. 1739.051 authorize the Superintendent to retain experts as witnesses in a hearing thereunder. While participation as a witness may not, in the strictest sense, be characterized as participation in the "conduct" of a hearing, it is clear

that the fact-finding function served by a hearing under the terms of R.C. 1739.051 is assisted and enhanced by professional, expert analysis and evaluation of the issues involved. Moreover, I am of the opinion that retention of such experts for the purpose of giving expert testimony is precisely the purpose contemplated by the General Assembly in the adoption of the statutory provisions set forth above.

You have, however, also inquired as to where the responsibility for compensating such witnesses lies. Under the terms of R.C. 1739.051 set forth above, the cost of experts reasonably necessary to assist in the conduct of a hearing not otherwise a part of the Superintendent's staff is to be borne by the association involved, provided that expenses thereby incurred may not exceed the sum fixed by the statutory formula set forth above. Consequently, it is my opinion, and you are so advised that:

- 1) The Superintendent of Insurance, under the terms of R.C. 1739.051, is authorized to retain attorneys, actuaries, accountants or other experts reasonably necessary to the hearing process for the purpose of presenting expert testimony at a hearing conducted thereunder.
- 2) A hospital service association involved in a hearing conducted pursuant to R.C. 1739.051 is obligated to meet the expenses incurred in the retention of such reasonably necessary expert witnesses, provided that any expenses thereby incurred may not exceed the sum fixed by the formula set forth in R.C. 1739.051.