

**OPINION NO. 75-074****Syllabus:**

The third paragraph of the Syllabus of Opinion No. 75-051, should be amended to read as follows:

"3. The rate of compensation for death benefits under R.C. 4123.59 for weeks after January 1, 1974 remains unchanged once determined. Similarly, the maximum rate of compensation for the weeks after January 1, 1974 also remains unchanged once determined."

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**To: Gregory J. Stebbins, Chairman, Industrial Commission of Ohio, Columbus, Ohio**

**By: William J. Brown, Attorney General, October 17, 1975**

Previously you submitted to me your request for my opinion which read in part as follows:

"1. Do the provisions of Section 4123.59, Ohio Revised Code as amended by Amended Substitute House Bill No. 417 apply to the dependents, who otherwise qualify for benefits, of individuals who died between November 16 and December 31, 1973, both dates inclusive?

"2. If your answer to the first question is in the affirmative:

"(a) What rate of compensation and what maximum rate of compensation, if any, apply to such benefits?

"(b) Is there a difference in such rate and maximum rate for the weeks prior to January 1, 1974 and the weeks thereafter?"

In response to this request I issued 1975 Op. Att'y. Gen. No. 75-051, the syllabus of which reads as follows:

"1. The provisions of R.C. 4123.59 as amended by Amended Substitute House Bill No. 417 apply to dependents, who otherwise qualify for benefits, of those individuals who died on or after November 16, 1973.

"2. The rate of compensation for weekly death benefits under R.C. 4123.59 is sixty-six and two-thirds per cent of the decedent's average weekly wage as calculated under R.C. 4123.61. The maximum rate of compensation is sixty-six and two-thirds per cent of the 'state-wide average weekly wage', which is determined pursuant to R.C. 4123.62 as of April 1, 1972 for dependents, who otherwise qualify for benefits, of those individuals who died on or between November 16, 1973 and December 31, 1973.

"3. The rate of compensation for death benefits under R.C. 4123.59 for weeks after January 1, 1974, remains unchanged once determined. However, the maximum rate of compensation for the weeks after January 1, 1974 will be based on the adjusted 'state-wide average weekly wage' as determined annually pursuant to R.C. 4123.62."

I now have before me your request seeking a clarification of the above opinion. This request reads in part as follows:

"I am now requesting a clarification of the last sentence of the third paragraph of the Syllabus of the above Opinion. . . .

. . . .

"I am requesting this clarification because it is now my understanding that the conclusion you reached in . . . [that sentence] may have been based upon misinformation supplied to your office by one of our employees. I am informed that prior to the issuance of this Opinion, your office was informed by an employee of the Industrial Commission, that the Commission was annually adjusting the maximum rate of compensation in all claims.

"I now wish to inform you that that information was erroneous.

"The current practice of the Industrial Commission is to set the maximum rate of compensation in each claim at the maximum rate in effect on the date of injury or the date of death. This maximum rate, once determined, is not altered during the life of the claim."

The opinion set forth in the last sentence of the third paragraph of the Syllabus was authored in response to your original Question 2 (b) which read:

"(b) Is there a difference in such rate and maximum rate for the weeks prior to January 1, 1974 and the weeks thereafter?"

This question pertained solely to benefits payable to otherwise qualified dependents of individuals who died between November 16 and December 31, 1973, inclusive. The question of what maximum rate of compensation is payable before and after January 1, 1974, arose from the enactment of Amended Substitute House Bill No. 417. That Bill amended R.C. 4123.62, to include paragraph (C), which states in pertinent part:

"(C) Effective January 1, 1974, and each first day of January thereafter, the current maximum weekly benefit amounts provided in sections 4123.56, 4123.58 and 4123.59, and division (A) of section 4123.57 of the Revised Code shall be adjusted based on the increase or decrease in the state-wide average weekly wage."

The adjustment referred to above was to be made on January 1, 1974. However, this section of the Bill became effective on November 16, 1973. The repeal of the existing statutes was also effective

on November 16, 1973. Accordingly, a question of what benefits, if any, were payable during the interim period arose.

The amendment to R.C. 4123.62 presented two possible interpretations. One interpretation was that all of the maximum rates presently being paid on existing claims were to be adjusted every year on the first day of January pursuant to the state-wide average weekly wage concept. A second view was that on the first day of every January the maximum rates were to be adjusted and that the newly adjusted maximum rate would apply to all claims arising during that calendar year, as opposed to previously existing claims. That is, once determined, the maximum rate would not change during the life of any given claim.

The interpretation contained in the third paragraph of the Syllabus of Opinion No. 75-051 was that the maximum rate of compensation payable to qualified dependents of individuals who died during the period of time in question should be adjusted every year. However, this opinion was reached only after the receipt and consideration of certain information supplied to me by one of your employees. The information supplied was that the Industrial Commission had been annually adjusting the maximum rate of compensation in all claims.

With that information in mind, I was of the opinion that the General Assembly did not intend Amended Substitute House Bill No. 417, to effect a major change in this Industrial Commission policy. Therefore, the amendment was interpreted in conformity with what I believed to be the existing administrative practice. This reliance upon administrative interpretation in the Workmen's Compensation area is supported by the following passage from Industrial Commission v. Brown, 92 Ohio St. 309 (1915) at page 311, to wit:

"Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do."

See also R.C. 1.49.

However, I have now been informed that the information supplied earlier, concerning the existing practice of the Industrial Commission was erroneous, and that the Industrial Commission has not been annually adjusting the maximum rate of compensation in each claim.

Therefore, in order to interpret the amendment to R.C. 4123.62 in a way which is in conformity with what I am now informed to be the existing procedure, I conclude that the amendment should not be construed to require an annual adjustment to the maximum rate of compensation payable in these claims, which arose during the inclusive period November 16, 1973 to December 31, 1973.

Further, I must conclude that the only change contemplated by the amendment was to annually adjust the maximum rate of compensation. This adjusted maximum rate would apply to all claims arising within the year for which the adjustment was made. Once determined the maximum rate would not change during the life of a claim.

Therefore, it is my opinion, and you are so advised that the third paragraph of the Syllabus of Opinion No. 75-051, should be amended to read as follows:

"3. The rate of compensation for death benefits under R.C. 4123.59 for weeks after January 1, 1974 remains unchanged once determined. Similarly, the maximum rate of compensation for the weeks after January 1, 1974 also remains unchanged once determined."