OPINION NO. 79-033

Syllabus:

If the State, one of its subdivisions, or an instrumentality of either chooses not to become a "contributing employer" to the state unemployment compensation fund under R.C. 4141.242, and instead remains as a "reimbursing employer" to that fund, there is no legal authority for the expenditure of public funds to purchase a policy of insurance which will cover any liability for benefits actually paid on behalf of such "reimbursing employer" in excess of the flat fee required of "contributing employers" under R.C. 4141.25.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, June 19, 1979

I have before me your request for my opinion which reads, in part, as follows:

> Amended House Bill No. 762, effective as an emergency January 1, 1978 amends Chapter 4141, Revised Code. . . . The pertinent provision, Section 4141.242, Revised Code, provides that the State and its political subdivisions may continue as reimbursing employers ([each] reimbursing the unemployment fund for regular benefits and extended benefits paid its employees and chargeable to it) or such public entities may elect to make a contribution payment of 3% of wages pursuant to Section 4141.25, Revised Code.
>
> It has come to the attention of this office that contracts of insurance are available which would indemnify public employers electing to remain reimbursing employers from liability to the fund in excess of the contribution rate. Any payment charged against the electing employer in excess of the 3% contribution rate which it would have been required to pay as a contributing employer would be payable by the insurer.

Therefore, you have raised the following question:

> In light of 4141.242 may the various subdivisions of the State and their instrumentalities who remain reimbursing employers lawfully expend public funds as premiums for the issuance of a contract of insurance that would indemnify the employer as to any amounts which would exceed the 3% rate charged contributing employers?

This office has frequently been asked to determine whether a public body possesses the legal authority to purchase insurance. See, e.g., 1976 Op. Att'y Gen. No. 76-048. The general rule has been that in the absence of express statutory authority, public funds may not be expended to purchase insurance. 1972 Op. Att'y Gen. No. 72-076.

The Supreme Court has held, in State ex rel. A. Bentley & Sons v. Pierce, 96 Ohio St. 44 (1917), that if there is any doubt as to the right to expend public monies under a legislative grant, such doubt must be resolved in favor of the public and against the expenditure. When the General Assembly has intended to confer a right upon a public body to purchase insurance, it has done so in a clear and express fashion. See, e.g., R.C. 306.04(K) and (L), 306.48, 307.441, 308.06(N), 505.23, 505.60, 505.61, 3706.04(O) or 6121.04(P). Because there is no legislative grant of authority to purchase the insurance you describe, express or otherwise, I must conclude that no authority exists to expend public funds for such insurance.

Accordingly, it is my opinion, and you are advised, that:

> If the State, one of its subdivisions, or an instrumentality of either chooses not to become a "contributing employer" to the state unemployment compensation fund under R.C. 4141.242, and instead remains as a "reimbursing employer" to that fund, there is no legal authority for the expenditure of public funds to purchase a policy of insurance which will cover any liability for benefits actually paid on behalf of such "reimbursing employer" in excess of the flat fee required of "contributing employers" under R.C. 4141.25.