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## AUDITOR OF STATE—

1. APPROPRIATION UNDER SEC. 22, ART. II, OHIO CONSTITUTION—SECTION 4123.391 RC NOT AN APPROPRIATION—TRANSFER OF FUNDS, UNAUTHORIZED.
2. TRANSFER OF FUNDS TO INDUSTRIAL COMMISSION AS PROVIDED FOR IN SECTION 4123.391 RC CAN BE MADE ONLY BY SPECIFIC APPROPRIATION—EXPENSES ALREADY INCURRED . . .

## SYLLABUS:

1. Section 4123.391, Revised Code, does not constitute an appropriation under Section 22 of Article II of the Constitution of Ohio, and in the absence of a specific appropriation the auditor of state is not authorized to transfer from the general fund to the account of the industrial commission any funds for the purpose of paying the compensation awards and administration expenses incurred under Sections 4123.031 through 4125.037, Revised Code, as specified in Section 4123.391, Revised Code.

2. The transfer of funds to the account of the industrial commission as provided in Section 4123.391, Revised Code, can be effected only when a specific appropriation has been made therefor by the General Assembly, and such an appropriation is the only manner in which the industrial commission can be reimbursed for expenses already incurred.

Columbus, Ohio, May 2, 1957

Hon. James A. Rhodes, Auditor of State  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“On January 9, 1957, the Bureau of Workmen’s Compensation forwarded to this office their certification that the total payment of awards made to Civil Defense workers in accordance with Section 4123.391 of the Revised Code from July 1, 1956 to December 1, 1956, amounted to \$1,613.49, and the cost of administration in accordance with the same section, at 6%, \$96.81, making a total of \$1,710.30.

“In the above mentioned section of the Revised Code, Paragraph A provides that ‘Sections 4123.031 to 4123.037, inclusive,

of the Revised Code shall be administered by the industrial commission of the State of Ohio, and a reasonable charge for the administrative costs involved, based upon the compilation of said costs and expenses as certified by the chairman of the industrial commission of the state of Ohio, *shall be paid by the auditor of state from the general fund account of the state of Ohio.*'

"Paragraph B of Section 4123.391 of the Revised Code states that 'Other costs, including compensation awards, whether lump sum or recurring payments, shall be chargeable to the general fund account of the state of Ohio, and at the end of each six-months of each fiscal year, upon certification of the amounts required by the chairman of the industrial commission, *the auditor of state shall transfer from the general fund to the account of the industrial commission* a sum equal to the amounts paid out by the industrial commission as reasonable costs of administration and as compensation for accidental injuries and death compensable under the provisions hereof.' (126 v. 876. Eff. 9-29-55.)

"Amended House Bill No. 929, an Act to make general appropriations for the biennium beginning July 1, 1955, and ending June 30, 1957, was effective July 6, 1955. Section 4123.391, Revised Code, was effective September 29, 1955.

"No appropriation was made to the Auditor of State, whereby he can pay from the General Fund Account of the State of Ohio, the amount called for above; that is, \$1,713.30, to the State Insurance Fund, covering the administrative costs and claims of Civil Defense workers. Likewise, no appropriation was made to the Adjutant General, Division of Civil Defense, out of which such an expense can be paid.

"While Paragraph B of Section 4123.391 states that the Auditor of State *shall transfer* from the *General Fund* to the account of the *Industrial Commission*, a sum equal to the amounts paid out by the Industrial Commission, the Auditor of State is of the opinion that he is without authority to make a transfer from the General Fund to the account of the Industrial Commission in order to pay the expenses enumerated above.

"The Civil Defense Division, we are informed by General Kreber, has no available funds in their current appropriation (House Bill No. 929) to use in asking the Control Board to transfer sufficient funds to meet the expense of \$1,710.30.

"Specifically, your opinion is requested concerning the manner in which the Industrial Commission of Ohio can be reimbursed in the amount of \$1,710.30, covering the above mentioned claims and administration expense for the six-months period ending December 31, 1956."

Section 4123.033, Revised Code, reads in pertinent part:

“Any civil defense worker, including any member of a civil defense corps of the state of Ohio or of the civil defense corps of any political subdivision of the state of Ohio or any other person, who may be certified as a civil defense worker during a natural disaster and the emergency thereby created, by the state civil defense director, county commissioners, mayor or chief executive of a municipality in the locality where the disaster occurs, and who shall suffer an accidental injury while performing civil defense duties, as defined herein, shall be compensated for any total disability or loss of member and his dependents shall be compensated for any death resulting from such an injury on the same basis as provided for workers, employees and their dependents under sections 4123.01 to 4123.94, inclusive of the Revised Code.”

Section 4123.391, Revised Code, reads:

“(A) Sections 4123.031 to 4123.037, inclusive, of the Revised Code shall be administered by the industrial commission of the state of Ohio, and a reasonable charge for the administrative costs involved, based upon the compilation of said costs and expenses as certified by the chairman of the industrial commission of the state of Ohio, shall be paid by the auditor of state from the general fund account of the state of Ohio.

“(B) Other costs, including compensation awards, whether lump sum or recurring payments, shall be chargeable to the general fund account of the state of Ohio, and at the end of each six-months of each fiscal year, upon certification of the amounts required by the chairman of the industrial commission, the auditor of state shall transfer from the general fund to the account of the industrial commission a sum equal to the amounts paid out by the industrial commission as reasonable costs of administration and as compensation for accidental injuries and death compensable under the provisions hereof.”

The answer to your question depends in large part on whether the quoted statutory language constitutes a specific appropriation within the terms of Section 22 of Article II of the Constitution of Ohio. That constitutional section reads as follows:

“No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.”

In my opinion, the language of Section 4123.391, Revised Code, *supra*, does not constitute an appropriation. The statute authorizes the

auditor to pay certain expenses when they are certified to him, and it prescribes the fund from which the money to pay those expenses shall be drawn; but these provisions do not of themselves authorize the expenditure of public moneys; that can be done only by a specific appropriation in accordance with the Constitution. In short, this statute authorizes the payment of certain expenses when the money for that purpose is appropriated but not before. Thus you are correct in your opinion that you are without authority to make a transfer from the general fund to the account of the industrial commission in order to pay these expenses.

This conclusion is supported by Opinion No. 4170, Opinions of the Attorney General for 1941, page 736. There it appears that an amendment of Section 6296-22 *et seq.* of the General Code, relating to drivers' licenses, had imposed new duties on the registrar of motor vehicles, and created new revenues, which were to be collected by him, and "paid into the treasury of the state for the expense of the administration of this act."

The appropriation of the current biennium provided for the expense incident to the original law, but did not cover the additional expenses entailed by the amendment. The question was whether the amendment amounted to an appropriation. It was held:

"The Registrar of Motor Vehicles is without authority to expend funds derived from 'Drivers' License Fees', collected under section 6296-22 and cognate sections of the General Code, whether such fees were collected prior or subsequent to the amendment of Section 6296-22, *supra*, by the 94th General Assembly (Am. S. B. No. 78), except 'in pursuance of a specific appropriation made by law' for a period not longer than two years, as required by Section 22, Article II, of the Constitution, since such fees are required to be paid into, and are in, the State Treasury."

Further, I am of the opinion that the industrial commission cannot be reimbursed for these expenses by any action of the controlling board. The powers of the controlling board extend only to transfers of the appropriated funds within specified limits. See Section 3 of the General Appropriation Act of 1955, Amended House Bill No. 929, 101st General Assembly, and Opinion No. 2407, Opinions of the Attorney General for 1921, page 815.

Consequently, I am of the opinion that the industrial commission

can be reimbursed for these expenses only by a specific appropriation for that purpose.

It is my opinion, and you are advised, that :

1. Section 4123.391, Revised Code, does not constitute an appropriation under Section 22 of Article II of the Constitution of Ohio, and in the absence of a specific appropriation the auditor of state is not authorized to transfer from the general fund to the account of the industrial commission any funds for the purpose of paying the compensation awards and administration expenses incurred under Sections 4123.031 through 4123.037, Revised Code, as specified in Section 4123.391, Revised Code.

2. The transfer of funds to the account of the industrial commission as provided in Section 4123.391, Revised Code, can be effected only when a specific appropriation has been made therefor by the General Assembly, and such an appropriation is the only manner in which the industrial commission can be reimbursed for expenses already incurred.

Respectfully,

WILLIAM SAXBE

Attorney General