

OPINION NO. 79-069**Syllabus:**

1. Am. S.B. 96, effective October 25, 1979, prohibits the recovery of the amount of public funds erroneously paid to procure insurance coverage for a public officer for the period June 16, 1976 to January 1, 1978, regardless of the date upon which such payments were made.
2. The amount due a public officer under Section 3 or 4 of Am. S.B. 96 is the amount paid to procure insurance coverage for the period June 16, 1976 to January 1, 1978, and voluntarily repaid by him or withheld from his salary, regardless of the date upon which the payments for insurance coverage were made.
3. Am. S.B. 96 does not authorize payments to a public officer who chose to pay his insurance premiums out of his personal funds because he understood that he was prohibited by Ohio Const. art. II, §20 from receiving such benefits at public expense.
4. Am. S.B. 96 is not limited in its effect to payments for insurance coverage made in violation of Ohio Const. art. II, §20; the Act is also applicable to payments made contrary to statutory authorization.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, October 17, 1979

I have before me your request for an interpretation of Am. S.B. No. 96, effective October 25, 1979, which is set forth below:

SECTION 1. Notwithstanding section 117.10 of the Revised Code or any other provision of law, no officer or other person shall

institute or maintain proceedings to recover from any officers the amount of insurance premiums paid to purchase insurance coverage for such officers between June 16, 1976 and January 1, 1978. No court shall have jurisdiction over any action brought in violation of this section.

SECTION 2. No auditor, treasurer, or other person shall cause any money to be withheld from compensation due any officer to recover the amount of insurance premiums paid to purchase insurance coverage for such officer between June 16, 1976 and January 1, 1978.

SECTION 3. Any auditor, treasurer, or any other person who has withheld from the compensation of any officer the amount of insurance premiums paid to purchase insurance coverage for such officer between June 16, 1976 and January 1, 1978 shall pay the amount of such premiums withheld to the officer.

SECTION 4. Any officer who has voluntarily repaid the amount of insurance premiums paid to purchase insurance coverage for such officer between June 16, 1976 and January 1, 1978 shall be paid the amount so repaid.

Your specific questions are as follows:

1. Is the amount deemed to be non-recoverable pursuant to Sections 1 and 2 of this Act that amount actually expended for insurance coverage from June 16, 1976 to January 1, 1978, without regard to the period of time during which the insurance coverage was effective, or is it that amount expended to procure insurance coverage for the effective period of June 16, 1976 to January 1, 1978, without regard to the time at which such payments were actually made?
2. Is the amount due an officer, pursuant to Sections 3 or 4 of this Act, that amount actually expended during the period of June 16, 1976 to January 1, 1978, and voluntarily repaid by him or withheld from his salary, without regard to the period of time during which the insurance coverage was effective, or is it that amount expended to procure insurance coverage for the effective period of June 16, 1976 to January 1, 1978, and voluntarily repaid by him or withheld from his salary, without regard to the time at which such payments were actually made?
3. Where a public officer chose to pay insurance premiums to procure insurance coverage on his behalf out of personal funds on the understanding that he was prohibited by Article II, Section 20, of the Ohio Constitution from receiving such benefits at public expense, is he entitled to reimbursement pursuant to Amended Senate Bill No. 96?
4. Is Amended Senate Bill No. 96 limited in its effect to payments for insurance coverage for public officers contrary to Article II, Section 20, of the Ohio Constitution, or is it equally applicable to payments for insurance coverage contrary to statutory authorization?

It is not difficult to surmise that the General Assembly's motivation for the enactment of Am. S.B. 96 was, at least in part, the Ohio Supreme Court's decision of June 16, 1976 in the case of Parsons v. Ferguson, 46 Ohio St. 2d 389 (1976). The Court held in that case that the payment of medical and hospital insurance premiums is a form of compensation for the purposes of Ohio Const. art. II, §20 and that, therefore, such payments may not be initiated after the commencement of the term for which an officer has been elected or appointed. The Court also held,

however, that if such payments have been made in good faith and under color of law, though erroneously, such payments are not recoverable. It would appear, therefore, that the General Assembly's motive in enacting Am. S.B. 96 was to establish statutory guidelines for the implementation of the latter part of the Court's decision. The statute makes the determination that public funds expended to purchase insurance coverage during the period June 16, 1976 to January 1, 1978, will be presumed to have been expended in good faith and under color of law and that such funds are not, therefore, recoverable.

The resolution of your first two questions depends upon an interpretation of that portion of each section of the act that states ". . . the amount of insurance premiums paid to purchase insurance coverage for such officers [or officer] between June 16, 1976 and January 1, 1978." The specific issue is whether the prepositional phrase "between June 16, 1976 and January 1, 1978" modifies the verb "paid" or the noun "coverage". Statutory words and phrases must be construed in accordance with the rules of grammar. R.C. 1.42. The applicable rule of grammar is that "[m]odifying phrases should be placed as near as possible to the words they modify." Warriner, *English Grammar and Composition*, vol. 10, §8(g)(2) (1963). I must conclude, therefore, that the prepositional phrase "between June 16, 1976 and January 1, 1978" was intended to modify the word "coverage". Construed in this manner, Section 1 and Section 2 of the Act prohibit the recovery of the amount paid to procure insurance coverage for the period June 16, 1976 to January 1, 1978, regardless of the time at which such payments were actually made. Section 3 and Section 4 of the Act require the reimbursement of an officer who voluntarily repaid, or who had withheld from his salary, the amount paid to procure insurance coverage on his behalf for the period June 16, 1976 to January 1, 1978, regardless of the time at which the payments for insurance coverage were made.

Your third question asks if Am. S.B. No. 96 authorizes the reimbursement of a public officer who chose to pay his insurance premiums out of his personal funds because he understood that he was prohibited by Ohio Const. art. II, §20 from receiving such benefits at public expense. If such authorization exists, it must be found within Section 3 or Section 4 of the Act.

Section 4 of the Act clearly does not authorize reimbursement under the factual circumstances set forth in your third question. Section 4 applies only in the event that a public officer has voluntarily repaid the amount of insurance premiums erroneously paid initially with public funds. Your inquiry is limited to those situations in which the public officer initially paid the premiums with his personal funds.

The result under Section 3 of the Act is not, however, as clear. Section 3 applies in the event that an auditor, treasurer, or other person has withheld from the compensation of any officer the amount of insurance premiums paid. Section 3 could be literally read to authorize the reimbursement of a public officer who initially paid the premiums with personal funds, if such payments were made by means of a payroll deduction. In that event, an auditor, treasurer, or some other person would have withheld from the compensation of the public officer the amount of insurance premiums paid, and Section 3 arguably would apply.

In my opinion, however, Section 3 of the Act may not be read so literally, since to do so would render that portion of the Act unconstitutional. R.C. 1.47. (In enacting a statute, compliance with the state constitution is presumed.) There is no basis for distinguishing, for the purposes of Ohio Const. art. II, §20, the initial payment of insurance premiums with public funds and the use of public funds to reimburse a public officer who has voluntarily paid his insurance premiums. If the direct payment of insurance premiums is constitutionally prohibited, the reimbursement of the public officer for such payments is similarly prohibited. In order to be construed in a constitutional manner, Section 3 of the Act must be limited to those situations in which an auditor, treasurer or other person has attempted to recover from a public officer, by withholding a portion of his compensation, the amount of public funds expended, erroneously but in good faith and under color of law, to procure insurance coverage for such officer. See Parsons

v. Ferguson, supra. Section 3 of the Act may not, therefore, be construed as authorizing the reimbursement of a public officer who chose to pay his insurance premiums out of his personal funds because he understood that he was prohibited by Ohio Const. art. II, §20 from receiving such benefits at public expense.

Your fourth question asks whether Am. S.B. No. 96 is limited in its effect to payments for insurance coverage contrary to Ohio Const. art. II, §20 or whether it is applicable also to payments made contrary to statutory authorization. As I indicated above, it is most likely that Am. S.B. 96 was enacted in response to the Supreme Court's decision in Parsons v. Ferguson, supra. The language of the statute itself does not, however, convey an intent to limit its effect to situations involving payments made contrary to Ohio Const. art. II, §20. The rule for determining legislative intent is that one must look first to the language of the statute, and if the intent is clearly expressed therein, the statute may not be restricted, qualified, narrowed, enlarged or abridged. Stewart v. Trumbull Co. Bd. of Elections, 34 Ohio St. 2d 129 (1973); Wachendorf v. Shaver, 149 Ohio St. 231 (1948); Detzel v. Nieberding, 7 Ohio Misc. 262 (Hamilton County Probate Ct. 1966). Since the language of Am. S.B. 96 affords no basis upon which to conclude that its provisions were intended to be limited to a particular type of erroneous payment, I must conclude that it applies to payments made contrary to statutory authorization as well as to payments made contrary to the provisions of the Ohio Constitution.

In specific response to your questions, it is, therefore, my opinion, and you are advised, that:

1. Am. S.B. 96, effective October 25, 1976, prohibits the recovery of the amount of public funds erroneously paid to procure insurance coverage for a public officer for the period June 16, 1976 to January 1, 1978, regardless of the date upon which such payments were made.
2. The amount due a public officer under Sections 3 or 4 of Am. S.B. 96 is the amount paid to procure insurance coverage for the period June 16, 1976 to January 1, 1978, and voluntarily repaid by him or withheld from his salary, regardless of the date upon which the payments for insurance coverage were made.
3. Am. S.B. 96 does not authorize payments to a public officer who chose to pay his insurance premiums out of his personal funds because he understood that he was prohibited by Ohio Const. art. II, §20 from receiving such benefits at public expense.
4. Am. S.B. 96 is not limited in its effect to payments for insurance coverage made in violation of Ohio Const. art. II, §20; the Act is also applicable to payments made contrary to statutory authorization.