

OPINION NO. 81-034**Syllabus:**

R.C. 4123.411 requires the Industrial Commission to set the assessments for the Disabled Workers' Relief Fund, within the limits specified in R.C. 4123.411, at a level that will produce an amount no greater than the amount estimated by the Commission to be necessary to carry out the provisions of R.C. 4123.412 to 4123.418 for the period for which the assessments are levied.

To: William W. Johnston, Chairman, Industrial Commission of Ohio, Columbus, Ohio
By: William J. Brown, Attorney General, July 10, 1981

I have before me your request for my opinion in which you present the following question:

Should the Commission maintain the Disabled Workers' Relief Fund at the level necessary to carry out the provisions of Section 4123.412 and 4123.418 for the period for which the assessment is levied or should the Commission maintain actuarial reserves for the Disabled Workers' Relief Fund?

The Disabled Workers' Relief Fund was created as a separate fund in 1953 when the 100th General Assembly enacted R.C. 4123.412, 4123.413, 4123.414, 4123.415, 4123.416, 4123.417 and 4123.418. 1953 Ohio Laws 506. R.C. 4123.412 currently provides:

For the relief of persons who are permanently and totally disabled as the result of injury or disease sustained in the course of their employment and who are receiving workers' compensation which is payable to them by virtue of and under the laws of this state in amounts, the total of which, when combined with disability benefits received pursuant to The Social Security Act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code, there is hereby created a separate fund to be known as the disabled workers' relief fund, which fund shall consist of such sums as are from time to time appropriated by the general assembly and made available to the order of the industrial commission to carry out the objects and purposes of sections 4123.412 to 4123.418 of the Revised Code. Said fund shall be in the custody of the treasurer of the state and disbursements therefrom shall be made by the industrial commission to those persons entitled to participate therein and in such amounts to each participant as is provided in section 4123.414 of the Revised Code.

Originally the Disabled Workers' Relief Fund was funded by legislative appropriations. However, in 1959 the primary method of funding was changed by the enactment of R.C. 4123.411, which provided for an assessment against the payroll of all employers. 1959 Ohio Laws 535 (103rd Gen. A.). Although the assessment against payroll continues to be the primary source of funding, a secondary source of funding was created in 1975 when the 111th General Assembly amended R.C. 4123.411 (1975 Ohio Laws, Pt. 2, 2917) to provide that if the assessment is not sufficient, the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to R.C. 4123.44. Currently R.C. 4123.411 provides:

For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the industrial commission shall levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, beginning July 1, 1980, such rate to be determined annually for each employer group listed in divisions (A) to (D) of this section, which will produce an amount no greater than the amount estimated by the commission to be necessary to carry out such sections for the period for which the assessment is levied. In the event the amount produced by the assessment is not sufficient to carry out such sections the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to section 4123.44 of the Revised Code.

Assessments shall be levied according to the following schedule:

(A) Private fund employers, except self-insured employers—in January and July of each year upon gross payrolls of the preceding six months;

(B) Counties and taxing district employers therein—in January of each year upon gross payrolls of the preceding twelve months;

(C) The state as an employer—in July of each year upon gross payrolls of the preceding twelve months;

(D) Self-insured employers—in January and July of each year upon gross payrolls of the preceding six months.

Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules adopted by the industrial commission pursuant to division (E) of section 4121.13 of the Revised Code.

The moneys derived from the assessment provided for in this section shall be credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The commission shall establish by rule classifications of employers within divisions (A) to (D) of this section and shall determine rates for each class so as to fairly apportion the costs of carrying out sections 4123.412 to 4123.418 of the Revised Code.

Consistent with the primary funding provision of R.C. 4123.411, the 103rd General Assembly also enacted R.C. 4123.419 (1959 Ohio Laws 1332 (H.B. 1131)), which currently provides:

The assessment rate established pursuant to section 4123.411 of the Revised Code, subject to the limits set forth in that section, shall be adequate to provide the amounts estimated as necessary by the industrial commission to carry out the provisions of sections 4123.412 to 4123.418 of the Revised Code, and in addition to provide moneys to reimburse the general revenue fund for moneys appropriated by section 2 of H.B. No. 1131 of the 103rd general assembly or by the 104th and succeeding general assemblies for disabled workmen's relief. When such additional moneys are available in whole or in part for the purpose of making such reimbursement, the director of budget and management shall certify such amount to the industrial commission who shall thereupon cause such moneys to be paid to the general revenue fund from the disabled workmen's relief fund except that any amounts due because of the state's obligation as an employer pursuant to section 4123.411 of the Revised Code and not paid to the disabled workmen's relief fund shall be deducted from any such reimbursement.

The primary source of funding is, therefore, an assessment on the payroll of all employers. Unlike premiums paid into the State Insurance Fund, to which your request refers, the assessment for the Disabled Workers' Relief Fund is not affected by the employer's merit rating. See R.C. 4123.34(C). The employer's accident experience has absolutely no bearing upon the assessment rate.

The level at which the Disabled Workers' Relief Fund must be maintained is also substantially different from that of the State Insurance Fund. R.C. 4123.29 requires that the premium rates for the State Insurance Fund shall be set at a level that assures its solvency. Specifically, the statute provides:

The industrial commission shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of said classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in Chapter 4123. of the Revised Code, and to maintain a state insurance fund from year to year. The rates shall be set at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the commission, is not an adequate measure for determining the premium to be paid for the degree of hazard, the commission may determine the rates of premium upon such other basis, consistent with insurance principles,

as is equitable in view of the degree of hazard, and whenever in such sections reference is made to payroll or expenditure of wages with reference to fixing premiums, such reference shall be construed to have been made also to such other basis for fixing the rates of premium as the commission may determine under this section.

The commission in setting or revising rates shall furnish to employers an adequate explanation of the basis for the rates set. (Emphasis added.)

In addition to the requirement of a solvent fund sufficiently large to provide for the compensation provided in R.C. Chapter 4123, R.C. 4123.34 also necessitates the creation and maintenance of a reasonable surplus. R.C. 4123.34 provides in part:

The industrial commission, in the exercise of the powers and discretion conferred upon it in section 4123.29 of the Revised Code, shall fix and maintain, for each class of occupation, or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury, occupational disease, and death that it may authorize to be paid from the state insurance fund for the benefit of injured, diseased, and the dependents of killed employees (Emphasis added.)

I understand that historically the Industrial Commission has interpreted the emphasized language of R.C. 4123.29 and 4123.34, quoted above, as requiring the State Insurance Fund to have a reserve which will enable it to meet the calculated future liability of the fund as of any given point in time. I further understand that the Commission sets premiums at a level to provide for such a reserve. Such an interpretation is in accordance with the statutory language requiring the setting of premium rates at a level that assures the solvency of the fund and the maintenance of a reasonable surplus.

The Disabled Workers' Relief Fund funding provisions, on the other hand, do not contain any language which can be read as requiring or authorizing the maintenance of a reserve. R.C. 4123.411 provides that the Industrial Commission shall levy an assessment, within the limits specified, which will produce an amount "no greater than" the amount estimated by the Commission to be necessary to carry out R.C. 4123.412 to 4123.418 "for the period for which the assessment is levied." R.C. 4123.411 also requires that the assessments be levied according to a specific schedule. The schedule provides that private fund employers and self-insured employers shall be assessed in January and July of each year upon the gross payroll for the preceding six months, and that counties and taxing district employers therein shall be assessed in January, and the state as an employer shall be assessed in July, both upon the gross payroll for the preceding twelve months.

A well-settled principle of statutory construction is that words in a statute are to be given their plain and ordinary meaning unless it is otherwise clearly indicated. Crane v. Comm'r of Internal Revenue, 331 U.S. 1 (1947); Lake County National Bank v. Kosydar, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1973); Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948).

Applying this principle to the language of R.C. 4123.411, I must conclude that the Commission is required to "levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, beginning July 1, 1980," but that, within these limits, the Commission has no authority to levy an assessment for the Disabled Workers' Relief fund which would produce an amount greater than the amount necessary to carry out the provisions of R.C. 4123.412 to 4123.418 for the period for which the assessments are levied. The legislative intent is clearly expressed in the statute. To levy assessments at a

rate which would be sufficient to create a surplus or a reserve would be to exceed the statutory authority contained in R.C. 4123.411.

Therefore, in specific response to your question, it is my opinion, and you are so advised, that R.C. 4123.411 requires the Industrial Commission to set the assessments for the Disabled Workers' Relief Fund, within the limits specified in R.C. 4123.411, at a level that will produce an amount no greater than the amount estimated by the Commission to be necessary to carry out the provisions of R.C. 4123.412 to 4123.418 for the period for which the assessments are levied.