

OPINION NO. 79-010**Syllabus:**

1. Amounts paid by employers as Premium Security Deposits pursuant to R.C. 4123.32 (F) may not be credited or transferred to the premium payment security fund created by R.C. 4123.34 (D).
2. R.C. 4123.34 (D) requires the Premium Payment Security Fund to be funded by money set aside by the Industrial Commission from money paid into the State Insurance Fund.

To: Robert C. Daugherty, Administrator, Bureau of Workers' Compensation, Columbus, Ohio
By: William J. Brown, Attorney General, March 23, 1979

I have before me your request for my opinion concerning the manner of funding the recently created Premium Security Deposit Fund required by R.C. 4123.34 (D). Specifically, your question reads as follows:

"May amounts paid by employers as Premium Security Deposits pursuant to Section 4123.32 (F), Revised Code, be credited or transferred to the Premium Payment Security Fund created by Section 4123.34 (D), Revised Code?

R.C. 4123.32 provides in pertinent part as follows:

"The industrial commission shall adopt rules with respect to the collection, maintenance, and disbursements of the state insurance fund among which rules shall be the following:

* * *

"(F) A rule providing that each employer, on the occasion of instituting coverage under Chapter 4123. of the Revised Code, shall submit a premium security deposit. The deposit shall be calculated equivalent to thirty per cent of the semi-annual premium obligation of the employer based upon the employer's estimated expenditure for wages for the ensuing six-month period plus thirty per cent of an additional adjustment period of two months but only up to a maximum of one thousand dollars and not less than ten dollars. The commission shall review the security deposit of every employer who has submitted a deposit which is less than the one thousand dollar maximum. The commission may require any such employer to submit additional money up to the maximum of one thousand dollars which, in the commission's opinion, reflects

the employer's current payroll expenditure for an eight-month period."
(Effective July 21, 1978)

The pertinent provisions of R.C. 4123.34 read as follows:

"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. In establishing rates, the commission shall take into account the necessity of insuring sufficient money is set aside in the premium payment security fund to cover any defaults in premium obligations. The commission shall observe the following requirements in classifying occupations or industries and fixing the rates of premium for the risks of the same:

* * *

"(D) The commission, from the money paid into the state insurance fund, shall set aside into an account of the state insurance fund titled a premium payment security fund sufficient money to pay for any premiums due from an employer and uncollected which are in excess of the employer's premium security deposit.

The fund shall be in the custody of the treasurer of state and disbursements therefrom shall be made by the bureau of workers' compensation upon order of the industrial commission to the state insurance fund. The use of the moneys held by the premium payment security fund shall be restricted to reimbursement to the state insurance fund of premiums due and uncollected in excess of an employer's premium security deposit. The moneys constituting the premium payment security fund shall be maintained without regard to or reliance upon any other fund. This section does not prevent the deposit of investment of the premium payment security fund with any other fund created by chapter 4123. of the Revised Code, but the premium payment security fund shall

be separate and distinct for every other purpose and a strict accounting thereof shall be maintained."

(Effective July 21, 1978,
emphasis added.)

R.C. 4123.32 (F) requires an employer who desires to obtain workers' compensation coverage to initially submit a Premium Security Deposit. R.C. 4123.34 (D) creates a separate Premium Payment Security Fund to reimburse the State Insurance Fund for a default by an employer of a semiannual premium obligation. The amount of the default the Premium Payment Security Fund would reimburse to the State Insurance Fund would be equivalent to that portion of the semiannual premium obligation the employer should have paid which is in excess of the employer's Premium Security Deposit.

In the event an employer is delinquent in the payment of his semiannual premium, R.C. 4123.34 (D) would require that the Administrator first apply the employer's Premium Security Deposit toward the amount due. If the Premium Security Deposit is not sufficient to cover the amount of the delinquent premium then the Administrator shall draw upon the Premium Payment Security Fund to make up the difference.

The fact that an employer's Premium Security Deposit must be used prior to using moneys from the Premium Payment Security Fund requires that these two funds remain separate. This requirement is further mandated by the language of R.C. 4123.34 (D) which provides "[t]he moneys constituting the premium payment security fund shall be maintained without regard to or reliance upon any other fund."

Additional evidence that the Legislature intended these funds be separate and distinct is found in R.C. 4123.36 which provides in part the steps a defaulting employer must take to have coverage reinstated. Specifically, the statute requires:

". . . reimbursement to the premium payment security fund for the money paid to the state insurance fund, on account of the default, payment of any semiannual premium obligations due but in default, and submission of a new premium security deposit pursuant to section 4123.32 of the Revised Code."

To be reinstated the employer must submit a new Premium Security Deposit, pay the delinquent premiums due and reimburse the Premium Payment Security Fund. The statute treats all of these accounts separately and the employer must reimburse each account before coverage will be reinstated.

The method by which the Premium Payment Security Fund is to be funded is specifically provided for by R.C. 4123.34 (D) which reads in part:

"(D) The commission, from the money paid into the state insurance fund, shall set aside into an account of the state insurance fund titled a premium payment security fund suf-

efficient money to pay for any premiums due from an employer and uncollected which are in excess of the employer's premium security deposit."

The money for the Premium Payment Security Fund must come from money set aside by the Industrial Commission from the State Insurance Fund. There are no statutory provisions authorizing a transfer of amounts paid as Premium Security Deposits to the Premium Payment Security Fund.

Therefore, in specific answer to your request, it is my opinion, and you are so advised, that amounts paid by employers as Premium Security Deposits, pursuant to R.C. 4123.32 (F), may not be credited or transferred to the Premium Payment Security Fund created by R.C. 4123.34 (D). R.C. 4123.34 (D) requires the Premium Payment Security Fund to be funded by money set aside by the Industrial Commission from money paid into the State Insurance Fund.