OPINION NO. 79-110

Syllabus:

1. The Safety and Hygiene Fund must, pursuant to Ohio Const. art. II, §35, be established and administered as a fund separate and distinct from the State Insurance Fund. Any moneys remaining in the Safety and Hygiene Fund at the close of the fiscal year must be retained in that fund and may not be returned or transferred to the State Insurance Fund.

2. R.C. 4123.32(A) does not authorize the Industrial Commission to refund to contributing employers any excess moneys accumulated in the Safety and Hygiene Fund.

3. Neither the Administrator of the Bureau of Workers' Compensation nor the Industrial Commission has the authority to invest moneys of the Safety and Hygiene Fund not needed for current operations. Such moneys may, however, be invested by the Treasurer of State in accordance with the provisions of R.C. Chapter 135.

4. The Industrial Commission may expend Safety and Hygiene Fund moneys for the purpose of processing payroll and personnel information, for providing office space, furniture and equipment for the Division of Safety and Hygiene, and for paying travel expenses incurred by the members of the Commission or by personnel of the Division of Safety and Hygiene in the performance of their duties under R.C. 4121.37. The accounting system used by the Commission to assess such administrative costs against the Safety and Hygiene Fund must be approved by the Auditor of State in accordance with the provisions of R.C. Chapter 117.

5. Personal property purchased through the Safety and Hygiene Fund must be inventoried and reported to the Auditor of State in accordance with R.C. 9.50.

6. Any claim due and payable to the Safety and Hygiene Fund that is not collected within thirty days of receipt must be certified to the Auditor of State in accordance with R.C. 115.10.

7. The cost of investigating occupational disease claims or claims arising from alleged violations of specific safety requirements promulgated by the General Assembly or the Commission may be charged against the Safety and Hygiene Fund, if, in addition to providing the results of such investigations to the Commission, the Division of Safety and Hygiene also utilizes the results in furtherance of the purposes of R.C. 4121.37.

8. The payment of money from the Safety and Hygiene Fund to the Department of Industrial Relations pursuant to an agreement executed January 30, 1974 for the purpose of educating and training safety experts and industrial hygienists constituted a lawful expense necessary or reasonably incidental to the purpose of R.C. 4121.37.

9. Absent specific evidence that the Industrial Commission failed to independently exercise its powers and duties as set forth in R.C. 4121.37, the use of personnel of the Division of Safety and Hygiene by the Department of Industrial Relations for the purpose of making safety inspections of the work places of public employees was lawful.

10. The Safety Codes Committee, created by resolution of the Industrial Commission for the purpose of reviewing safety code requirements and drafting revisions for consideration by the Industrial Commission, is not a public body for the purposes of R.C. 121.22.

11. The function of the Safety Codes Committee is reasonably incidental to the purpose of R.C. 4121.37 and is, therefore, a proper object of expenditures for the Safety and Hygiene Fund.

To: William W. Johnston, Chairman, Industrial Commission of Ohio, Columbus, Ohio

By: William J. Brown, Attorney General, December 27, 1979

I have before me your request for my opinion which presents a series of questions concerning the Safety and Hygiene Fund.

The Safety and Hygiene Fund is separate and distinct from the "workers' compensation fund," which I will refer to as the "State Insurance Fund." Both of these funds are authorized by Ohio Const. art. II, §35, which provides in part as follows:

> For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board

> shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. . . . (Emphasis added.)

Your first six questions stem from the fact that during many of the past years the income of the Safety and Hygiene Fund has exceeded actual expenditures and as a result excess moneys have accumulated in this fund. Specifically, your first question reads as follows:

> 1. Is the "separate fund" derived from a proportion of contributions paid by employers, a separate fund with respect to the receipts and disbursements of each year with any excess of receipts over disbursements to be retained by or returned to the workers' compensation fund, or does any such excess remain in the "separate fund" for possible use in subsequent years?

In order to answer this question it is necessary to examine the nature of the Safety and Hygiene Fund and the manner in which it may be expended. The Safety and Hygiene Fund is clearly a fund separate and distinct from the State Insurance Fund. This conclusion is mandated by the language of art. II, §35, which authorizes the setting aside of a "separate fund" for the investigation and prevention of industrial accidents and diseases.

The General Assembly recognized this constitutional mandate when it enacted R.C. 4123.30, which specifically excepts the Safety and Hygiene Fund from the State Insurance Fund. The statute provides:

> Money contributed by the employers mentioned in division (B)(1) of section 4123.01 of the Revised Code constitutes the "public fund" and the money contributed by employers mentioned in division (B)(2) of such section constitutes the "private fund". Each such fund shall be collected, distributed, and its solvency maintained without regard to or reliance upon the other. Whenever in sections 4123.01 to 4123.94, inclusive, of the Revised Code, reference is made to the state insurance fund, such reference is to such two separate funds but such two separate funds and the net premiums contributed thereto by employers after adjustments and dividends, except for the amount thereof which is set aside for the investigation and prevention of industrial accidents and diseases pursuant to Section 35 of Article II, Ohio Constitution, any amounts set aside for actuarial services authorized or required by section 4123.47 of the Revised Code or for fees and costs authorized by section 4123.51 of the Revised Code, and any amounts set aside to reinsure the liability of the respective insurance funds for the following payments, constitute a trust fund for the benefit of employers and employees mentioned in sections 4123.01, 4123.03, and 4123.73 of the Revised Code. . . . (Emphasis added.)

The separate nature of these funds is also recognized in R.C. 4123.42, which provides that "[t]he treasurer of state shall be custodian of the state insurance fund, the occupational diseases fund, and the fund for the investigation of industrial accidents and diseases. . . ." These funds are also treated separately in R.C. 4123.47(B), which provides in part that "[t]he auditor of state annually shall conduct an audit of the administration of Chapter 4123. of the Revised Code by the commission and the bureau of workers' compensation and the safety and hygiene fund. . . ."

In addition to requiring that the Safety and Hygiene Fund be a separate fund, Ohio Const. art. II, §35 also mandates that the fund shall "be expended by such board in such manner as may be provided by law for the investigation and

prevention of industrial accidents and diseases." The manner provided by law is found in R.C. 4121.37 (formerly numbered R.C. 4123.17), which provides:

> The industrial commission having, by virtue of Section 35 of Article II, Ohio Constitution, the expenditure of the fund therein created for the investigation and prevention of industrial accidents and diseases, shall, in the exercise of such authority and in the performance of such duty, employ a superintendent and the necessary experts, engineers, investigators, clerks, and stenographers for the efficient operation of a bureau for the prevention of industrial accidents and diseases, hereby created.
>
> The commission shall set aside such portion of the contributions paid by employers, not to exceed one per cent thereof in any year, as is necessary for the payment of the salaries of such superintendent and the compensation of the other employees of such bureau, and the expenses of such investigations and researches for the prevention of industrial accidents and diseases, as the commission deems proper. The superintendent of the bureau for the prevention of industrial accidents and diseases, under the direction of the commission, shall conduct investigations and researches for the prevention of industrial accidents and diseases, and shall print and distribute such information as may be of benefit to employers and employees. The salary of the superintendent and the compensation of the other employees of such bureau, the expenses necessary or incidental to such investigations and researches for the prevention of industrial accidents and diseases, and the cost of printing and distributing such information shall be paid by the commission from such prevention fund.
>
> . . . .
>
> The powers and duties devolved and imposed upon the commission by this section shall be exercised independently and without regard to the department of industrial relations. (Emphasis added.)

The bureau created by R.C. 4123.37 is presently known as the Division of Safety and Hygiene. Under the provisions of R.C. 4121.37 moneys from the Safety and Hygiene Fund may be expended for: (1) the salaries of the superintendent and employees of the Division of Safety and Hygiene, (2) the necessary or incidental expenses for investigations and researches for the prevention of industrial accidents and diseases, and (3) the cost of printing and distributing such information.

R.C. 4123.30, on the other hand, requires that the State Insurance Fund shall constitute a trust fund for employers and employees to be expended for:

> . . .the payment of compensation, medical services, examinations, recommendations and determinations, nursing and hospital services, medicine, rehabilitation, death benefits, funeral expenses, and like benefits for loss sustained on account of injury, disease, or death provided for by section 4123.01 to 4123.94, inclusive, of the Revised Code, and for no other purpose. . . .

The Ohio Supreme Court considered the above quoted language of R.C. 4123.30 in the case of Corrugated Container Co. v. Dickerson, 171 Ohio St. 289 (1960). In that case the question before the Court was whether the State can take money which has been set aside for the payment of awards to injured workers and the dependents of killed workers and transfer it to the General Revenue Fund of the State. The question arose because the General Assembly in the General Appropriation Act of 1959 directed the State Insurance Fund to pay into the General Fund one-fourth of the amount of the appropriation for the Industrial Commission and the Bureau of Workers' Compensation for each fiscal year. In effect, the statute sought to cause dollars contributed by employers to the State Insurance Fund to be used to subsidize the cost of administering the Workers'

Compensation Program. In ruling upon that provision of the 1959 appropriation act directing the questioned transfer, the Court held in a per curiam opinion:

> The policy of the state relative to the State Insurance Fund and admin strative costs has been declared by the constitutional and statutory provisions above referred to, and the General Assembly has not, because of the ambiguous provisions of the appropriation act above referred to, either expressly or by clear implication declared an intention to modify or change such policy. Such provisions of the appropriation act are in conflict with the established policy of the state and are violative of the express limitation placed upon the State Insurance Fund by Section 35, Article II of the Constitution.
>
> No part of the State Insurance Fund, a trust fund for the benefit of employers and employees, may be used for administrative purposes except as provided in Section 4123.342, Revised Code, and the Industrial Commission was without authority to adopt its resolution attempting to transfer money from the State Insurance Fund to the general fund in accordance with the appropriation act.

Relying in part upon the decision in Corrugated Container Co. v. Dickerson, supra, I advised the Administrator of the Bureau of Workers' Compensation in 1974 Op. Att'y Gen. No. 74-067, that the Department of Administrative Services and the Industrial Commission have no authority to create a rotary fund in the State Insurance Fund for payment of administrative costs of managing investments made pursuant to R.C. 4123.44. In rendering that opinion, I concluded that the earnings from such investments are paid into the State Insurance Fund, and therefore may be expended only for those purposes for which the State Insurance Fund may be utilized.

While I am aware of no reported Ohio cases or Opinions of the Attorney General dealing with the Safety and Hygiene Fund, I find the rationale of Corrugated Container Co. v. Dickerson, supra, and 1974 Op. Att'y Gen. No. 74-067, to be applicable with respect to the expenditure of the Safety and Hygiene Fund.

As discussed above, the particularized purposes for which the State Insurance Fund and the Safety and Hygiene Fund may be expended are expressly set forth by the Ohio Constitution and statutes. If at the end of each year excess receipts over disbursements of the Safety and Hygiene Fund were returned to the State Insurance Fund, both the constitutional and statutory limitations placed upon the Safety and Hygiene Fund would be violated. Any moneys so returned would, of necessity, be commingled with the State Insurance Fund and would no longer be used for the purpose specified in the Constitution. Once returned, these moneys would be required to be expended for the payment of compensation and benefits and not for the investigation and prevention of industrial accidents and diseases.

In response to your first question, therefore, I am of the opinion that the Safety and Hygiene Fund is a separate fund to be expended only for those purposes enumerated in R.C. 4121.37, and any excess of receipts over disbursements for each year are to be retained in that fund and may not be returned to the State Insurance Fund.

My answer to your first question also serves as a basis for answering your second question, which reads as follows:

> 2. May the Commission transfer any part or all of such accumulation to the workers' compensation fund?

Having concluded that any excess moneys accumulated in the Safety and Hygiene Fund cannot be returned to the State Insurance Fund, I must also conclude that the Industrial Commission may not voluntarily transfer any part or all of such accumulation to the State Insurance Fund. To do so would violate the constitutional and statutory limitations placed upon the Safety and Hygiene Fund.

The third question you present reads as follows:

> 3. May any of such accumulation be refunded by the Commission proportionately to contributing employers, as excess surplus under Section 4123.32(A) of the Ohio Revised Code?

R.C. 4123.32(A) provides:

> The industrial commission shall adopt rules with respect to the collection, maintenance, and disbursements of the state insurance fund among which rules and regulations shall be the following:
>
> (A) A rule providing that in the event there is developed as of any given rate revision date a surplus of earned premium over all losses which, in the judgment of the commission, is larger than is necessary adequately to safeguard the solvency of the fund, the commission may return such excess surplus to the subscriber to the fund in either the form of cash refunds or a reduction of future premiums. . . . (Emphasis added.)

R.C. 4123.32(A) clearly authorizes the Industrial Commission to adopt rules providing for a refund to contributing employers of any surplus of earned premiums over losses. However, the first paragraph of R.C. 4123.32, specifically limits the authority for making such refunds to any surplus in the State Insurance Fund.

As previously discussed, the General Assembly has recognized the separate nature of the Safety and Hygiene Fund and the State Insurance Fund in a number of statutes. It must be presumed, therefore, that the General Assembly was aware of this distinction when drafting R.C. 4123.32, and by its silence, elected not to provide the Industrial Commission with the authority to refund any accumulated surplus belonging to the Safety and Hygiene Fund. The "surplus" contemplated by R.C. 4123.32(A) is clearly limited to any surplus existing in the State Insurance Fund. The statute is completely silent as to the Industrial Commission's authority to adopt rules pertaining to the Safety and Hygiene Fund.

The Industrial Commission can exercise rule making authority only within the statutory limits provided, and may not make such rules as would be beyond the statutory limits creating that authority. State ex rel. Waller v. Industrial Commission, 50 N.E. 2d 680, 683 (Ct. App. Franklin County 1943), aff'd, 142 Ohio St. 193 (1943); State ex rel. Kahler-Ellis Co. v. Cline, 69 Ohio Law Abs. 305, 308 (C.P. Lucas County 1954). Accordingly, R.C. 4123.32 cannot be read as vesting the Industrial Commission with the authority to refund any accumulated surplus in the Safety and Hygiene Fund.

Therefore, in specific answer to your third question, it is my opinion that the Industrial Commission may not refund to contributing employers as excess surplus under R.C. 4123.32(A), any excess moneys accumulated in the Safety and Hygiene Fund.

Your first three questions all deal with the problem of how to reduce the funds available in the Safety and Hygiene Fund to those actually needed for the prevention and investigation of industrial accidents. All three envision a reduction of the Fund via payments. It would appear that the desired result could be lawfully accomplished absent the need for any payments out of the Fund. Both Ohio Const. art. II, §35 and R.C. 4121.37 authorize the Industrial Commission to set aside, in any year, such portion of the contributions paid by employers as in its judgment "may be necessary" to carry out the enumerated purposes of the Safety and Hygiene Fund. Apparently a somewhat greater portion than necessary has been set aside during past years since the Fund has been accumulating a surplus. While R.C. 4123.32(A) cannot be read to authorize a refund of this surplus, it would appear that in the future the portion of contributions set aside could be lowered until such time as this accumulation is substantially reduced and yearly income more closely approximates yearly expenditures.

Your next three questions all pertain to the investment of moneys in the Safety and Hygiene Fund and will therefore be discussed together. These questions read as follows:

4. May monies in the fund, not needed for current operations, be invested?

5. If such money may be invested, who or what body is authorized to direct the investment, e.g.

   a) The Administrator of the Bureau of Workers' Compensation with approval of the Industrial Commission?

   b) The Industrial Commission which has sole jurisdiction over the Fund, or

   c) The Treasurer of State as custodian of a fund, the investment of which is not otherwise regulated by law.

6. What investment law applies to investment of the Fund, e.g. the applicable provisions on investments contained in Chapter 4123 of the Revised Code, the provisions of Chapter 135 Revised Code, or some other statutory provisions or general law applicable to trustees?

The investment powers of the Administrator of the Bureau of Workers' Compensation and the Industrial Commission are set forth in R.C. 4121.121(G), R.C. 4123.44, R.C. 4123.441, R.C. 4123.442, and R.C. 4131.03. R.C. 4121.121(G) provides as follows:

> The administrator of the bureau of workers' compensation is responsible for management of the bureau and for the discharge of all administrative duties imposed upon the industrial commission in Chapter 4123. of the Revised Code, and in the discharge thereof:
>
> . . . .
>
> The administrator shall exercise the investment powers vested in the commission by section 4123.44 of the Revised Code but all investments shall be such as the commission approves. All business shall be transacted, all funds invested, all warrants for money drawn and payments made, and all cash and securities and other property shall be held in the name of the commission, or in the name of its nominee, provided that nominees are authorized by the commission resolution solely for the purpose of facilitating the transfer of securities, and restricted to members of the commission, the administrator, and designated members of the staff, or a partnership composed of any such persons.

R.C. 4123.44 in turn authorizes the Administrator, with the approval of the Industrial Commission, to invest any of the surplus or reserve of the State Insurance Fund in certain enumerated types of investments by providing:

> (A) The administrator of the bureau of workers' compensation with the approval of the industrial commission may invest any of the surplus or reserve belonging to the state insurance fund in any bonds, notes, certificates of indebtedness, mortgage notes, debentures, or other obligations or securities described below. (Emphasis added.)

R.C. 4123.441 and R.C. 4123.442 provide the Administrator with additional authority to invest any of the surplus or reserve of the State Insurance Fund in a number of investments not included within R.C. 4123.44. R.C. 4131.03(C) confers upon the Administrator the same powers to invest any of the surplus or reserve belonging to the coal-workers pneumoconiosis fund as are delegated to the Administrator and

the Commission under R.C. 4123.44 with respect to the State Insurance Fund.

Each of the foregoing statutes confers upon the Administrator and the Commission the authority to invest particular funds in a particular manner. There is, however, no similar grant of power with respect to the investment of any surplus in the Safety and Hygiene Fund. The omission of this express power is not entirely surprising. Since R.C. 4121.37 provides for the setting aside into the Safety and Hygiene Fund only such sum as "is necessary" for authorized expenditures, the General Assembly probably did not anticipate a surplus in the fund that would necessitate the need to confer upon the Commission the power to invest such surplus funds.

There is no rule of statutory construction that would permit me to expand the express powers of the Commission merely because a situation not provided for, or contemplated by, the General Assembly is found to exist. State ex rel. Foster v. Evatt, 144 Ohio St. 65, 105 (1944). To the contrary, it is the general rule that an administrative body has only such powers as are expressly delegated to it by the General Assembly, and that the powers delegated may not be extended by implication. State ex rel.Kahler-Ellis Co. v. Cline, supra. Furthermore, the courts have held that the power to invest public funds is a power that must be expressly delegated by the General Assembly. The Fidelity & Casualty Co. of New York v. The Union Savings Bank Co., 119 Ohio St. 124 (1928); State v. Buttles, 3 Ohio St. 309 (1854). Moreover, when the General Assembly has seen fit to confer investment power, that power is usually carefully circumscribed by appropriate safeguards. Any implied investment power would lack such express safeguards. See R.C. 4121.121. Thus, in accordance with the foregoing authority, I must conclude that neither the Administrator nor the Commission has authority to invest surplus funds of the Safety and Hygiene Fund.

You have also inquired whether the Treasurer of State may invest surplus moneys of the Safety and Hygiene Fund. The investment powers of the Treasurer of State are set forth in R.C. Chapter 135, commonly known as "The Uniform Depository Act." The Treasurer is expressly empowered thereby to invest public moneys not needed for immediate use. The term "public moneys" is defined for the purposes of R.C. Chapter 135 as ". . .all moneys in the treasury of the state or any subdivision of the state, or moneys coming lawfully into the possession or custody of the treasurer of state or of the treasurer of any subdivision. . . ." R.C. 135.01(K). As I noted previously, the Treasurer of State is the custodian of the Safety and Hygiene Fund. R.C. 4123.42. It is, therefore, my opinion that surplus moneys in the Safety and Hygiene Fund may be invested by the Treasurer of State under and in accordance with the provisions of R.C. Chapter 135.

Your next two questions pertain to the Industrial Commission's authority under R.C. 4121.37 to expend the Safety and Hygiene Fund. Specifically, your questions read:

> 7. Was O.R.C. 4121.37 intended to serve a general spending authority in furtherance of Article II, Section 35, or was it intended to be language of restriction leaving no discretion to the Commission or its selected supervisor, e.g. prohibiting the expenditures of the "Fund" for such items as: 1) costs assessed by the Department of Administrative Service for processing personnel and payroll data; 2) rental of office space for the Division of Safety and Hygiene; 3) purchase of furniture and office equipment used by personnel of the Division of Safety and Hygiene; [4)] travel costs incurred by Commissioners in obtaining and distributing safety information; [5)] travel costs incurred by personnel of the Division of Safety and Hygiene in obtaining and distributing safety information. Or, more specifically, does O.R.C. 4121.37 either permit or prohibit the Commission's proposed fixed fee assessment to the Division of Safety and Hygiene?
>
> 8. Should you conclude that O.R.C. 4121.37 cannot be construed as

> "general spending authority in furtherance of Article II, Section 35" what statute or statutes would apply to expenditures such as those listed in items 1) through [5)] ?

As a general rule, the legislature does not, by statute, list each and every expenditure an officer may incur in the exercise of administrative duties. A part of a public officer's function is to exercise discretion and make decisions concerning the expenditure of funds under his or her control. Generally, funds can be spent if the expenditures are reasonably incidental to the main purpose of the agency and not expressly limited by statute, Long v. Board of Trustees, 24 Ohio App. 261 (Franklin County 1926).

As previously noted, Ohio Const. art. II, §35 authorizes the creation of a separate fund to be expended in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. The manner provided by law is set forth in R.C. 4121.37, which generally authorizes the Industrial Commission to expend the Safety and Hygiene Fund for the salaries of a superintendent and staff of employees, the cost of conducting investigations and research for the prevention of industrial accidents and diseases, and the cost of printing and distributing such information as may be of benefit to employers and employees. These items therefore constitute the main purpose for which the Safety and Hygiene Fund may be expended.

However, the authorization contained in R.C. 4121.37 includes the authority to incur expenses "necessary or incidental" to achieving the main purpose of the statute. To this extent the statute gives the Industrial Commission wide discretion in making expenditures from the fund provided they fall within the parameters of the statute.

The Safety and Hygiene Fund is distinguishable from the State Insurance Fund in that there is express provision for the payment of administrative costs from the Safety and Hygiene Fund. Administrative costs may not be charged against the State Insurance Fund, since R.C. 4123.30 provides that the State Insurance Fund shall constitute a trust fund for the payment of benefits for losses sustained on account of work related injury, disease or death ". . .and for no other purpose. . . ." The reasoning in Corrugated Container v. Dickerson, supra, would, therefore, not prohibit the payment of administrative costs from the Safety and Hygiene Fund.

In your question you inquire as to the authority of the Commission to expend the Safety and Hygiene Fund on certain specific items. With respect to those costs you have listed, if the Commission deems such expenditures to be reasonably incidental to the main purpose of the statute, those costs are properly chargeable to the fund.

Obviously, an agency cannot operate without incurring such costs as the processing of personnel and payroll data, the rental of office space and the purchase of needed equipment. Such costs are incidental to the main purpose of the Division of Safety and Hygiene and specific statutory authority for those expenditures is not required. Similarly, travel expenses of Division personnel when reasonably incidental to the purpose of Safety and Hygiene are proper expenditures.

With respect to the travel expenses of Industrial Commission members it should be noted that R.C. 4121.131 provides in part:

> The industrial commission, in addition to the specific powers, authority and duties vested in and imposed upon it by section 4121.13 of the Revised Code, shall. . .exercise the powers and authorities in Section 4121.37 of the Revised Code, ...

Should a Commissioner incur travel expenses solely in the exercise of the powers and authorities set forth in R.C. 4121.37 then that cost would be properly chargeable to the Safety and Hygiene Fund.

However, R.C. 4121.37 does not constitute a general spending authority in furtherance of Ohio Const. art. II, §35. In addition to authorizing the creation of the Safety and Hygiene Fund, this constitutional provision also authorizes the passage of laws to (1) establish a State Insurance Fund to compensate injured workers and their dependents for death, injuries or occupational diseases; (2) establish the Industrial Commission and empower it to classify occupations, fix premium rates, collect and administer the fund and determine all rights of claimants thereto; and (3) empower the Commission to hear and determine whether or not an injury, diseases or death resulted because of the employer's failure to comply with a specific safety requirement, and if it finds such a violation, to award additional compensation to the claimant and charge the employer directly for that award. Clearly, the foregoing purposes are unrelated to the main purpose of the Safety and Hygiene Fund and expenditures of Safety and Hygiene moneys for those purposes would therefore be unauthorized by R.C. 4121.37 and impermissible under Ohio Const. art. II, §35.

The last portion of your seventh question inquires whether R.C. 4121.37 either permits or prohibits the Commission's proposed fixed fee assessment to the Division of Safety and Hygiene. The Commission proposes to assess the Division a fixed fee for the supplying of "necessary experts, . . . , clerks and stenographers for the efficient operations of a bureau" (R.C. 4121.37), apparently because of the "very difficult accounting problems" associated with trying to allocate the time spent by the Commission rendering services to the Division. In answer to this question I must advise you that R.C. 4121.37 neither permits, nor prohibits your proposed fixed fee assessment.

R.C. 4121.37 is enabling legislation and expenses incurred reasonably incidental to its stated purpose are legitimate. Your question raises the problem of how to account for those legitimate expenses. As an accounting problem, this matter falls within the jurisdiction of the Auditor of State and the Bureau of Inspection and Supervision of Public Offices. In this regard several statutes should be noted. R.C. 4123.47 provides in part:

> (B) The auditor of state annually shall conduct an audit of the administration of Chapter 4123. of the Revised Code by the commission and the bureau of workers' compensation and the safety and hygiene fund. . . .

R.C. 117.01 ". . .creates the bureau of inspection and supervision of public offices, in the office of the auditor of state, which bureau shall inspect and supervise the accounts and reports of all state offices as provided in sections 117.01 to 117.19, inclusive, of the Revised Code. . . ." R.C. 117.05 further provides in part:

> (A) The chief inspector and supervisor of public offices shall prescribe and require the installation of a system of accounting and reporting for the public offices named in section 117.01 of the Revised Code. Such system shall be uniform in its application to offices of the same grade and accounts of the same class, and shall prescribe the form of receipt, vouchers, and documents required to separate and verify each transaction, and forms of reports and statements required for the administration of such offices or for the information of the public.
>
> Such system of accounting and reporting shall include forms showing the sources from which the public revenue is received, the amount collected from each source, the amount expended for each purpose, and the use and disposition of public property. . . .

The actual question that you present is whether or not your proposed fixed fee assessment will satisfy the accounting and reporting procedures prescribed by the chief inspector and supervision of public offices and I am not in a position to answer that question.

Therefore, in specific answer to questions seven and eight, I am of the opinion

that R.C. 4121.37 gives the Industrial Commission broad discretion in expending the Safety and Hygiene Fund for the general purposes of paying the salaries of a superintendent and staff of employees of the Division of Safety and Hygiene, for the cost of conducting investigations and research for the prevention of industrial accidents and diseases, and for the cost of printing and distributing such information as may be of benefit to employers and employees. Additionally, any costs incurred which are reasonably incidental to these purposes are properly chargeable to the Safety and Hygiene Fund. However, R.C. 4121.37 does not give the Industrial Commission the general authority to expend the Fund for any other purposes set forth in Ohio Const. art. II, §35 which are unrelated to safety and hygiene. The manner of accounting for expenditures from the Safety and Hygiene Fund comes under the jurisdiction of the Auditor of State and the Bureau of Inspection and Supervision of Public Offices.

The next two questions you present read as follows:

9. Is the personal property purchased through the Fund required, by Section 9.50 of the Revised Code, to be reported annually to the Auditor of State?

10. Are claims believed to be due and payable to the Safety and Hygiene Fund in connection with expenditures made therefrom, to be certified to the Auditor of State, after unsuccessful collection effort, as provided generally for State Government under Section 115.10 of the Revised Code, and if not, what procedure should be followed in pursuing collection efforts?

With respect to your ninth question, R.C. 9.05 provides as follows:

> The officers in charge of all state departments, and the board of each state institution, shall cause a full and accurate inventory, in duplicate, to be taken at the close of each fiscal year, which shall specify all the various kinds of personal property and the value thereof, the number of acres of land and the value thereof, and the number and kind of buildings and the value thereof. Said inventory shall be made for the board of each state institution by the officer in charge thereof. The inventory shall be signed by such officer in charge of each state department, and by the officer making it for the board of each state institution. Such inventory shall be certified as being correct by the officer in charge of each state department, and by the board of each state institution for which said inventory is made. One copy of the inventory shall be made in a proper record book to be kept for that purpose in each state department and institution returning said inventory; the other shall be filed in the office of the auditor of state on or before the fifteenth day of December following. A summary of each inventory made shall be published in the report of the institution of that year and a sufficient number of copies shall be furnished the secretary of state in the following December for each member of the general assembly, and not less than fifty copies shall be furnished the governor. (Emphasis added.)

The statute by its very terms is applicable only to officers in charge of state departments and the board of each state institution. The dispositive issue is, therefore, whether the Industrial Commission is a state department or state institution for the purposes of R.C. 9.50.

Neither term is expressly defined for the purposes of R.C. 9.50. These terms are, however, defined elsewhere in the Revised Code either expressly or by reference to particular departments or institutions. For example, R.C. 121.01(A) defines the term "department" as meaning the several departments of state administration enumerated in R.C. 121.02. The term "institutions" is most frequently used to refer to the various institutions of higher education,

R.C.3345.011; welfare or benevolent institutions, R.C. Chapter 5121; or penal or reformatory institutions, R.C. 5120.05. While the meanings given these terms in other sections of the Revised Code are not necessarily applicable for the purpose of R.C. 9.50, they do illustrate the narrow interpretation that may be given these terms.

Absent an express statutory definition, however, the terms "department" and "institutions" may be more broadly interpreted. The term "state department" may be generally defined as any branch or division of government administration, Emergency Fleet Corporation v. Western Union Telegraph Co., 275 U.S. 415 (1928); United States v. MacEvoy, 58 F. Supp. 83 (D.C. N.J. 1944); Glendinning v. Curry, 14 So. 2d 794 (1943). Similarly, the term "institution" may be defined broadly to mean an association or agency established for promoting some specific purpose. State ex rel. Guilbert v. Kilgour, 8 Ohio N.P.(n.s.) 617 (C.P. Hamilton County 1909); In re Funk's Estate, 45 A. 2d 67 (Pa. 1946).

Since the terms "department" and "institution" are not expressly defined for the purposes of R.C. 9.50, it is necessary to determine whether a narrow or broad reading of these terms better fulfills the purpose of the statute. United States v. MacEvoy, supra. The purpose of the statute is to inventory state property. I can conceive of no reasonable basis for concluding that the need for such an inventory is dependent upon whether the state body in question is legally designated an agency, institution, department, board or commission. Rather, it would appear that the need for an inventory exists whenever a state officer or agency is empowered to acquire and hold property in the name of the State.

I am further persuaded to conclude that the terms of R.C. 9.50 should not be narrowly construed by the fact that the required inventory must be filed with the Auditor of State. The Auditor of State has, pursuant to R.C. Chapter 117, the duty of examining and supervising the accounts and reports of all state offices. The Auditor is specifically charged with the duty of determining whether any public property has been converted or misappropriated. R.C. 117.10. In order to carry out this duty, the chief inspector and supervisor of public offices is directed to prescribe and require the installation of a uniform system of accounting, which system must include forms showing the use and dispositon of public property. R.C. 117.05. R.C. 9.50 and R.C. Chapter 117 are, in my opinion, in pari materia, and should, therefore, be construed together to ascertain the legislative intent. State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 466 (1956). Thus, the provisions of R.C. 9.50 should be broadly construed to include at least those state departments or institutions that are subject to provisions of R.C. Chapter 117. As indicated perviously, R.C. 4123.47(B) requires that the Auditor of State conduct audits of the Safety and Hygiene Fund.

For the foregoing reasons, it is my opinion that any personal property purchased through the Safety and Hygiene Fund must be reported annually to the Auditor of State in accordance with R.C. 9.50.

With respect to your tenth question, R.C. 115.10 provides as follows:

> When an officer or agent of the state comes into possession of a claim due and payable to the state, he shall demand payment thereof, and on payment have the amount certified into the state treasury. If he fails to collect such claim within thirty days after it comes into his possession, he shall certify it to the auditor of state, specifying the transaction out of which it arose, the amount due, the date of maturity, and the time when payment was demanded. The auditor of state shall not issue his warrant on the treasurer of state for the salary of any such officer or agent of the state until this section is complied with.

The statute charges public officers with certain duties. While the statute does not define a "public officer," the Ohio Supreme Court defined that term in the case of State ex rel. v. Brennen, 49 Ohio St. 33, 38 (1892), as follows:

> Where an individual has been appointed or elected, in a manner prescribed by law, has a designation or title given him by law, and exercises functions concerning the public, assigned to him by law, he must be regarded as a public officer.

Clearly, under this definition the members of the Industrial Commission are public officers and subject to the provisions of R.C. 115.10. Therefore, I am of the opinion that all claims due and payable to the Safety and Hygiene Fund are to be certified to the Auditor of State, pursuant to R.C. 115.10, if collection efforts by the Division have failed.

The next two questions you present read as follows:

> 11. May the costs of investigating the facts in occupational disease claims, to the exclusion of all lost time claims, be borne by the Fund?
>
> 12. May the costs of investigating the facts in workers' compensation claims for additional award of compensation be borne by the Fund?

Before responding to these questions, I believe it will be of assistance in understanding your questions to set forth the explanatory information furnished in your request. Your letter states as follows:

> For approximately the last three decades, personnel of the Division have been assigned, at the cost of the Fund, to investigate some types of injuries and diseases that are the subjects of claims in process under the workmen's compensation law. Those investigations fall into two separate categories.
>
> In occupational disease cases involving respiratory problems and alleged chemical causes, the Division's professional hygienists are the best trained and equipped to investigate such conditions and are directed by the Commission to investigate conditions at the site where the condition was asserted to have originated and to submit a report to the Commission setting forth the results of such investigation. Obviously, in such investigations the experience gained by the investigator can be and is useful in connection with advice and assistance given to other employers in preventing industrial diseases. However, the results of these investigations are also used by the Commission in its ultimate determination of the merits of the claim.
>
> In the other type of situation, investigations are conducted by Division personnel, at the cost of the Fund and by direction of the Commission, respecting claims for additional awards of compensation. Such awards are required to be made pursuant to provisions of Article II, Section 35 of the Constitution, where the Commission finds that an injury, death or disease resulted from the failure of an employer to comply with a specific safety requirement promulgated by the General Assembly or by the Commission. The Commission, historically, has drawn on the expertise of the Division in drafting codes of specific safety requirements. Similarly, it has used employees assigned to the Division to investigate alleged violations of the codes that have resulted in injury, death or disease and has used the investigation reports in evaluating the claims pending before it.

Once again the questions you present pertain to the authority of the Industrial Commission to make certain expenditures from the Safety and Hygiene Fund. Earlier in this opinion I concluded that the Industrial Commission did not have the authority to expend the Safety and Hygiene Fund for those purposes provided in Ohio Const. art. II, §35 which are unrelated to the main purpose of the Safety and

Hygiene Fund as set forth in R.C. 4121.37.

The processing and adjudication of occupational disease claims and applications for additional awards for injuries, deaths or diseases allegedly caused by an employer's failure to comply with a specific safety requirement are duties of the Industrial Commission which are separately set forth in art. II, §35, and not included within the stated purposes of R.C. 4121.37. At first glance it would therefore appear that the costs of such investigations would not be properly chargeable to the Safety and Hygiene Fund. However, the question is not so easily answered because it is obvious that in conducting these investigations the Division has the opportunity to perform its duty of investigating industrial accidents and diseases. Therefore, in order to determine if the costs of such investigations are reasonably incidental to the the main purpose of R.C. 4121.37, it is necessary to examine the manner in which the information obtained from the investigations is utilized.

If, in addition to providing the results of such investigations to the Industrial Commission, the Division also utilizes that information in much the same manner as it would use information generated by its own investigations, then it would appear that the cost of such investigations would be reasonably incidental to the main purpose of R.C. 4121.37. This situation would hold true even though the Industrial Commission initiated the requests and received a benefit from the investigations. If, on the other hand, the information obtained from such investigations is utilized solely by the Industrial Commission for the purpose of adjudicating claims, then it would appear that the Division of Safety and Hygiene is not receiving any actual benefit in fulfulling its duties under the provisions of R.C. 4121.37. In this event, the costs of such investigations, are not properly chargeable to the Safety and Hygiene Fund.

With respect to the two types of investigations described in your request, it would appear that the information obtained through such investigation is actually utilized by the Division in furtherance of its duties under R.C. 4121.37. You state that the experience gained by the investigation of occupational disease claims is useful in advising other employers in the prevention of industrial diseases. Similarly, investigations of alleged violations of specific safety requirements would appear to further the Division's duty of preventing industrial accidents. It is, therefore, my opinion that the costs of such investigations may be charged against the Safety and Hygiene Fund.

The next series of questions you present also concern certain expenditures which have been made from the Safety and Hygiene Fund. Specifically, the questions read as follows:

> 13. Was the transfer of $750,000 in January, 1974 from the Safety and Hygiene Fund to the Department of Industrial Relations pursuant to the agreement between the Industrial Commission and the Department lawful or unlawful?
>
> 14. Was the use of personnel on the Safety and Hygiene payroll in 1974 by the Department of Industrial Relations for the purpose of making safety inspections of the work places of public employees lawful or unlawful?
>
> 15. If one or both of the immediately preceding types of expenditures from the Safety and Hygiene Fund are held to have been unlawfully made, what general remedies, if any, are available to the Commission?

In presenting the first of these questions, you provided the following information in your letter requesting my opinion:

> The first involves a transfer in January, 1974,to the Department of Industrial Relations of $750,000 for the support of a contract

> between the Department and the U.S. Department of Labor under Section 7(c)(1) of the Occupational Safety and Health Act. Such transfer was effected pursuant to a contract entered into by the Commission and the Department of Industrial Relations. Before the latter contract was entered into, your Assistant, Mr. Hickey advised the Commission that, in his opinion, such transfer of funds would be illegal. Your formal opinion on the matter, however, was not solicited. In order to avoid lengthy paraphrase of the matter here, we are attaching copies of the contract between the Industrial Relations Department and the Industrial Commission of Ohio and the Resolution of the Commission authorizing the transfer of the sum of $750,000.

When the matter of the proposed $750,000 transfer was originally presented to my assistant he was requested to review the proposed contract or agreement which was designated "Draft 12-20-73." After reviewing the proposed agreement the primary objection to the transfer was based upon the following paragraphs of that instrument:

> (3) The Department of Industrial Relations through its Division of Occupational Safety and Health and the Industrial Commision of Ohio through its Division of Safety and Hygiene will share all administrative decisions authorized by the State of Ohio pursuant to the terms of the 7(c)(1) Contract, (Appendix III). . .
>
> (4) Monies transferred to the rotary above specified shall be used exclusively. . .
>
> (c) For uses which the parties may from time to time agree to in writing and attach as addendum to this agreement.

At that time it was noted that the above paragraphs appeared to be in conflict with the last paragraph of R.C. 4121.37 (formerly R.C. 4123.17) which provides that "[t]he powers and duties devolved and imposed upon the commission by this section shall be exercised independently and without regard to the department of industrial relations."

While R.C. 4121.37 requires the Commission to exercise the enumerated powers and duties independent of and without regard to the Department of Industrial Relations, the proposed agreement provided for a mutual exercising of these powers and duties. Based upon that conflict my Assistant was of the opinion that the statutory mandate prohibited the Commission from entering into the proposed agreement.

However, it is apparent that, after receiving that opinion, the Commission revised the proposed agreement. The agreement which was ultimately executed by the Commission and the Department of Industrial Relations on January 30, 1974, differs in several respects from the draft of December 20, 1973. The most notable difference was the elimination of the above quoted language in the draft providing for the mutual administration of the program. In place of that language, the executed agreement contained the following:

> 2. Said monies are to be transferred effective January 21, 1974, to be used exclusively for the following purposes:
>
> (a) To obtain matching federal funds for the education and training of safety experts and industrial hygienists.
>
> (b) To reimburse the Department of Industrial Relations for expenditures for equipment (list appended hereto) used in the education and training of such safety experts and industrial hygienists, provided that upon the completion of such education and training, such equipment will become the property of the Industrial Commission of Ohio, Division of Safety and Hygiene.

> The employment of all such safety experts and industrial hygienists as well as the use of any and all information obtained through research or other studies conducted pursuant to this authorization shall be within the sole discretion of the Industrial Commission, independently and without regard to the Department of Industrial Relations.

It is apparent that these revisions were made in order to allow the Commission to exercise its independent discretion in administering the program.

As I have previously stated, R.C. 4123.37 grants the Industrial Commission wide discretion in expending the Safety and Hygiene Fund for those expenses necessary or incidental to such investigations and researches for the prevention of industrial accidents and diseases as the Commission deems proper. It has long been established in Ohio that the court will not interfere with executive or administrative officers or boards in the performance of duties which are discretionary in nature, or involve the exercise of judgment, unless the action is such as to amount to fraud, bad faith, or a gross abuse of the discretion conferred upon such officer or board. Brannon v. Bd. of Education, 99 Ohio St. 369 (1919); State ex rel. The City of Dayton v. Patterson, 93 Ohio St. 25 (1915); Cooper v. Williams, 4 Ohio 253 (1831).

It is clear from the face of the documents you have furnished that a majority of the previous Commission members, in exercising their discretion, deemed as proper the expenditure of the $750,000. The Resolution of the Industrial Commission dated January 17, 1974, provided:

> WHEREAS, Section 4123.17 ORC authorizes the Industrial Commission to appropriate funds from the "Separate Fund" authorized by Article II, Section 35 of the Ohio Constitution for expenses necessary or incidental to such investigations and researches for the prevention of industrial accidents and diseases; AND
>
> WHEREAS, The Industrial Commission does deem as proper expenditures from the Separate Fund for the training of state personnel in the Occupational Safety and Health program so that such trained state personnel can educate Ohio employers in the requirements and applications of the Occupational Safety and Health Act of 1970 as amended, thereby enabling said employers to make the required modifications in their workplaces to comply with said federal law.
>
> NOW, therefore, be it resolved that subject to all provisions of Section 4123.17 RC, The Industrial Commission does hereby authorize the transfer of $750,000 from funds set aside for the Division of Safety and Hygiene to Rotary 604 of the Department of Industrial Relations. The Department shall account to the Commission for all funds spent each month, within 30 days of the end thereof, and shall account for all expenditures before August 1, 1974.

Further examination of the Agreement, executed January 30, 1974, illustrates that by expending the sum of $750,000 by way of a transfer to the Department of Industrial Relations, the Commission intended to avail itself of new resources for the prevention, investigation and education in the area of occupational safety and health. Specifically, the Agreement provided in part:

> WHEREAS, the Federal Occupational Safety and Health Act of 1970, 29 U.S.C., §651 et seq. has created new standards and has made available new resources for prevention, investigation and education in the area of occupational safety and health;
>
> WHEREAS, the responsibility of the Industrial Commission of Ohio includes the education and training of Ohio's employers and employees as well as the continuing education and improvement of

the staff of the Division of Safety and Hygiene;

> WHEREAS, in order to carry out its responsibilities, the Industrial Commission must actively support the education and training of safety experts and industrial hygienists familiar with federal standards and federal administrative procedures and must utilize to the best of its ability the benefits that have been made available to the states pursuant to the Occupational Safety and Health Act of 1970; . . . .

The education of employers and employees with respect to any occupational safety standards, be they state or federal, clearly appears to be incidental to, if not necessary for, the prevention of industrial accidents and diseases. The expenditure of funds to acquire the expertise and knowledge needed to so educate would therefore be necessary, or reasonably incidental, to the main purpose of R.C. 4121.37 and provide a public benefit to the citizens of Ohio.

It should also be noted that Ohio courts have held that, in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of jurisdiction conferred upon them by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in lawful manner and that all legal intendments are in favor of the administrative action. State ex rel. Shafer v. Ohio Turnpike Commission, 159 Ohio St. 581 (1953); State ex rel. Speeth v. Carney, 163 Ohio St. 159 (1955).

Therefore, in specific answer to your thirteenth question, I am of the opinion that the transfer of $750,000 from the Safety and Hygiene Fund to the Department of Industrial Relations pursuant to the agreement executed January 30, 1974, was within the discretion of the Industrial Commission and constituted a lawful expense necessary or reasonably incidental to the main purpose of R.C. 4121.37.

The next question presented concerns the use of personnel on the Safety and Hygiene payroll in 1974, by the Department of Industrial Relations for the purpose of making safety inspections. With respect to this question, your letter requesting my opinion states as follows:

> The second item has to do with an amount of $76,376.05, determined in the Report to be the salaries and travel expenses paid from the Safety and Hygiene Fund to employees of the Division, covering the period from February through December of 1974, during which such employees worked under the supervision of the Department of Industrial Relations in carrying out a Public Employee Safety and Health Program. That program was developed pursuant to an Executive Order of the Governor authorizing formulation of State Occupational Safety and Health standards equal to those mandated for private employers by the Federal Occupational Safety and Health Act.

Your letter states that the primary purpose of this expenditure was to prevent accidents and diseases. With such a purpose the expenditure would clearly be within the Commission's discretion and necessary to or reasonably incidental to the main purpose of R.C. 4121.37.

The sole question is, therefore, whether the cooperative venture described in your request violated that portion of R.C. 4121.37 that requires the Industrial Commission to exercise its powers and duties under that statute independently and without regard to the Department of Industrial Relations.

As I indicated in my response to your thirteenth question, R.C. 4121.37 does not, in my opinion, prohibit any and all contact or cooperation between the Commission and the Department of Industrial Relations. Rather, the statute merely requires that the Industrial Commission exercise its exclusive judgment and discretion in all matters relating to the performance of its duties under R.C. 4121.37. The statute, moreover, permits the Commission to undertake activities

that might otherwise be performed by the Department of Industrial Relations, but does not necessarily prohibit coordination of such activities, provided the Commission independently determines that such coordination will be in furtherance of the provisions of R.C. 4121.37. To interpret R.C. 4121.37 as prohibiting any and all forms of contact or coordination between two agencies of state government would be a drastic departure from the traditional policy of inter-agency cooperation. See R.C. 121.17. Absent an unequivocal legislative intent to absolutely bar all forms of cooperative undertakings between the Commission and the Department, I am disinclined to conclude that the sole fact that certain staff level employees of the Division of Safety and Hygiene were supervised by employees of the Department of Industrial Relations in the course of a limited joint program compels a conclusion that the Commission failed to exercise independently its powers and duties under R.C. 4121.37.

Therefore, in specific answer to your question, I am of the opinion that absent specific evidence that the Commission failed to exercise independently its powers and duties as set forth in R.C. 4121.37, the mere fact that personnel on the Safety and Hygiene payroll received day-to-day supervision by the Department of Industrial Relations for the purpose of making safety inspections of the work places of public employees cannot be deemed unlawful.

Since neither of the expenditures you have inquired about has been determined to be unlawful, it is not necessary to address your fifteenth question.

Your next two questions pertain to the Safety Codes Committee created in 1950 by a resolution of the Industrial Commission to study and review the subject of safety codes in and for the State of Ohio. Specifically, your questions read as follows:

> 16. Is the Safety Codes Committee a body whose meetings are required by statute to be held in a public place and be open to the public, pursuant to public notice of time and place of meeting?
>
> 17. Is the function of the Safety Codes Committee a proper object of expenditure from the Fund?

In presenting these questions you describe the function of the Safety Codes Committee as follows:

> The purpose the Committee has served over the many years of its operation has been the review of safety codes adopted by other jurisdictions, the review of changes in the production and construction arts and the drafting of proposed codes of specific requirements and changes therein, for consideration by The Industrial Commission in connection with the Commission's constitutional and statutory jurisdictions over safety standards. The Committee submits its recommendations to the Commission and, after such review as the Commission wishes to give them, it either rejects them or sets them for public hearing, under the statutory requirements imposed expressly upon the Commission in that respect by Chapter 119, Revised Code.

R.C. 121.22, popularly known as the "Sunshine Law" provides in part as follows:

> (B) As used in this section:
> (1) "Public body" means any board, commission, committee, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution.
> . . . .

> (C) All meetings of any public body are declared to be public meetings open to the public at all times.

Unlike some open meeting statutes which expressly extend to all bodies established by law to serve a public purpose, e.g., Hawaii Rev. Laws §92-2, or to those bodies which receive and expend tax revenue, e.g., Ill. Ann. Stat. Ch. 102 §42, the Ohio statute provides no clear standard of applicability. It is necessary to determine therefore, whether or not the Safety Codes Committee qualifies as a "public body" as that term appears in R.C. 121.22.

R.C. 121.22(B)(1) defines a "public body" as any "board, commission, committee or similar decision-making body of a state agency, institution or authority. . . ." The inclusion of the term "committee" within that definition would, at first glance, appear to indicate that the Safety Codes Committee is a public body. However, the definition further requires the committee to be a "decision-making" body. While advisory committees of state agencies may make some decisions in a very general sense, it seems unlikely that they can, in a strict sense, be considered decision-making bodies. Their purpose is to advise. Their advice is then presumably considered by the parent body in an open meeting.

Perhaps the best indication of the intended scope of R.C. 121.22 is provided by its introductory provision which reads as follows:

> (A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted by law. (Emphasis added.)

Thus, the General Assembly apparently intended the statute to apply to all bodies which are comprised of public officials. Conversely, a body comprised of individuals who are not public officers would not fall within the purview of the statute. See 1976 Op. Att'y Gen. No. 76-062.

Earlier in this opinion I cited the case of State ex rel. v. Brennan, supra, which defines a public officer as follows:

> Where an individual has been appointed or elected, in a manner prescribed by law, has a designation or title given him by law and exercises functions concerning the public assigned to him by law, he must be regarded as a public officer.

The members of the Safety Codes Committee are not elected or appointed by law and their functions are not assigned by law. This Committee is not a statutory creation but rather was created in 1950 by an Industrial Commission resolution. The function and duties of the Committee are derived from the Industrial Commission's resolution and not from any statute.

Therefore, in answer to your sixteenth question, it is my opinion that the Safety Codes Committee is not a public body subject to the provisions of R.C. 121.22.

Your seventeenth question inquires as to whether or not the function of the Safety Codes Committee is a proper object of an expenditure from the Safety and Hygiene Fund.

The function that the Safety Codes Committee serves by reviewing changes in the production and construction industries and by drafting proposed safety requirements, clearly is necessary or incidental to the main purpose of R.C. 4121.37.

Therefore, in answer to your question, it is my opinion that the expenses of the Safety Codes Committee are proper expenditues from the Safety and Hygiene Fund.

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

1. The Safety and Hygiene Fund must, pursuant to Ohio Const. art. II, §35, be established and administered as a fund separate and distinct from the State Insurance Fund. Any moneys remaining in the Safety and Hygiene Fund at the close of the fiscal year must be retained in that fund and may not be returned or transferred to the State Insurance Fund.

2. R.C. 4123.32(A) does not authorize the Industrial Commission to refund to contributing employers any excess moneys accumulated in the Safety and Hygiene Fund.

3. Neither the Administrator of the Bureau of Workers' Compensation nor the Industrial Commission has the authority to invest moneys of the Safety and Hygiene Fund not needed for current operations. Such moneys may, however, be invested by the Treasurer of State in accordance with the provisions of R.C. Chapter 135.

4. The Industrial Commission may expend Safety and Hygiene Fund moneys for the purpose of processing payroll and personnel information, for providing office space, furniture and equipment for the Division of Safety and Hygiene, and for paying travel expenses incurred by the members of the Commission or by personnel of the Division of Safety and Hygiene in the performance of their duties under R.C. 4121.37. The accounting system used by the Commission to assess such administrative costs against the Safety and Hygiene Fund must be approved by the Auditor of State in accordance with the provisions of R.C. Chapter 117.

5. Personal property purchased through the Safety and Hygiene Fund must be inventoried and reported to the Auditor of State in accordance with R.C. 9.50.

6. Any claim due and payable to the Safety and Hygiene Fund that is not collected within thirty days of receipt must be certified to the Auditor of State in accordance with R.C. 115.10.

7. The cost of investigating occupational disease claims or claims arising from alleged violations of specific safety requirements promulgated by the General Assembly or the Commission may be charged against the Safety and Hygiene Fund, if, in addition to providing the results of such investigations to the Commission, the Division of Safety and Hygiene also utilizes the results in furtherance of the purposes of R.C. 4121.37.

8. The payment of money from the Safety and Hygiene Fund to the Department of Industrial Relations pursuant to an agreement executed January 30, 1974 for the purpose of educating and training safety experts and industrial hygienists constituted a lawful expense necessary or reasonably incidental to the purpose of R.C. 4121.37.

9. Absent specific evidence that the Industrial Commission failed to independently exercise its powers and duties as set forth in R.C. 4121.37, the use of personnel of the Division of Safety and Hygiene by the Department of Industrial Relations for the purpose of making safety inspections of the work places of public employees was lawful.

10. The Safety Codes Committee, created by resolution of the Industrial Commission for the purpose of reviewing safety code requirements and drafting revisions for consideration by the Industrial Commission,, is not a public body for the purposes of R.C. 121.22.

11. The function of the Safety Codes Committee is reasonably incidental to the purpose of R.C. 4121.37 and is, therefore, a proper object of expenditures for the Safety and Hygiene Fund.