

## OPINION NO. 74-067

## Syllabus:

The Department of Administrative Services and 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. Disbursements from the state insurance fund for payment of such administrative costs are limited to those provided for in the appropriations act and R.C. 4123.341 and 4123.342.

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To: Anthony R. Stringer, Administrator, Bureau of Workmen's Compensation,  
Columbus, Ohio

By: William J. Brown, Attorney General, August 13, 1974

I have before me your request for my opinion, which reads as follows:

"Over the past two years, The Bureau of Workmen's Compensation and The Industrial Commission of Ohio have, pursuant to Section 4123.44, taken actions to increase the productivity of the State Insurance Fund. Most of these actions have been centered in the bond portfolio where an effort has been made to manage the portfolio instead of simply buying and holding bonds to maturity. As a result of this approach the earnings of the fund have been increased substantially with no sacrifice in the quality of the portfolio components.

"Since the program has proven successful, the effort will be continued. This means, however, that additional expenses will have to be incurred. These expenses will arise from the necessity of securing additional staff and professional counseling services.

"The Department of Administrative Services has indicated its policy approval for the creation of a rotary fund, subject to its continuing supervision, which would allocate a portion of the investment

income of the Fund for the payment of the costs of managing the investments of the fund.

"Accordingly, your opinion is respectfully requested on the following question: May the Department of Administrative Services by administrative action, legally create a rotary fund from a portion of the earnings for the payment of expenses of managing the portfolio of the State Insurance Fund?"

As I understand your question, it is whether the Department of Administrative Services and Industrial Commission may create a rotary fund which is not authorized by R.C. Chapter 4123, and for which no appropriation has been made by the General Assembly.

R.C. 4123.44 is a lengthy statute which empowers the Administrator of the Bureau of Workmen's Compensation, with the approval of the Industrial Commission, to invest any surplus or reserve in the state insurance fund in certain securities. This Section provides for disposition of the principal of and interest on such securities as follows:

"All such purchases must be approved by a resolution adopted by the commission. All such bonds, notes, certificates of indebtedness, mortgage notes, or debentures so purchased forthwith shall be placed in the hands of the treasurer of state, who is hereby designated as custodian thereof, or in the hands of his authorized agent. Such securities may be deposited by the treasurer of state for safekeeping with an authorized agent, selected by the treasurer of state, who is a qualified trustee under section 135.18 of the Revised Code. The treasurer of state shall collect the interest thereon as the same becomes due, and also the principal thereof, and pay the same, when collected, into the state insurance fund.  
\* \* \*

Therefore, the earnings from such investments are paid into the state insurance fund, and may be used only for those purposes for which that fund may be used.

The General Assembly has expressly provided for the payment of administrative costs of the Industrial Commission and Bureau of Workmen's Compensation out of the state insurance fund. Am. Sub. H.B. No. 86, the appropriations act for the current biennium, appropriates funds and provides for administrative costs in Section 2, at page 70, as follows:

#### INDUSTRIAL COMMISSION

Total Operating Expenses	\$ 1,765,707	\$ 1,832,736	
OPERATING ROTARY			
852-601 Division of Safety & Hygiene	1,700,000	1,800,000	
Total Operating Rotary Fund	1,700,000	1,800,000	\$ 3,500,000

Total General Revenue Fund	1,765,707	1,832,736	3,598,443
Total Industrial Commission	\$ 3,465,707	\$ 3,632,736	\$ 7,098,443

## BUREAU OF WORKMEN'S COMPENSATION

Total Operating Expenses	\$ 9,597,492	\$ 10,227,306	
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## OPERATING ROTARY

855-601 Federal Rotary	12,400	12,600	
Total Operating Rotary Fund	12,400	12,600	25,000
Total General Revenue Fund	9,597,492	10,227,306	19,824,798
Total Bureau of Workmen's Compensation	\$ 9,609,892	\$ 10,239,906	\$ 19,849,798

"The state insurance fund shall pay into the general revenue fund in accordance with sections 4123.341 and 4123.342 of the Revised Code, the administrative costs of the industrial commission. Such costs shall include the appropriations to the bureau of workmen's compensation, the industrial commission and those portions of the appropriations to the attorney general and treasurer of state applicable to workmen's compensation services, including pro-rata cost of maintaining the state merit system as provided in section 143.04 [124.07] of the Revised Code, to the extent of actual expenses incurred.

"Payments shall be made each quarter based upon actual liability accrued or determined for such quarter as specified by the department of finance."

R.C. 4123.341, referred to in the preceding language, reads in part as follows:

"The administrative costs of the industrial commission shall be those costs and expenses which are incident to the discharge of the duties and performance of the activities of the industrial commission under Chapters 4121. and 4123. of the Revised Code, including administrative costs of the state rehabilitation center, and all of said costs shall be borne by the state and by other employers amenable to Chapter 4123. of the Revised Code as follows:

"(A) In addition to the contribution required of the state under sections 4123.39 and 4123.40

of the Revised Code, the state shall appropriate to the industrial commission such sum as the general assembly determines to be necessary. One-tenth of said administrative costs shall be paid by the state in order to discharge its obligation as an employer to contribute to the cost of administration.

"(B) The office of budget and management may allocate the state's share of administrative costs to the general revenue fund and other funds including rotary funds, in such manner as it finds most equitably apportions such costs."

It can readily be seen from the foregoing enactments that the General Assembly has expressly provided for the payment of administrative costs of the Commission out of the general fund, and has appropriated a sum of money to pay such costs. The general fund is then reimbursed for one-tenth of such costs by the state insurance fund.

Article II, Section 22, Ohio Constitution, provides that "[n]o money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; \* \* \*." Only the General Assembly has authority to appropriate moneys to a state agency from public funds.

R.C. 126.07 empowers the Office of Budget and Management to control appropriations to a certain extent. This Section reads in part as follows:

"Each department, office, and institution of the state government, other than the legislative and judicial departments, shall, before any appropriation to such department becomes available for expenditure, prepare and submit to the office of budget and management an estimate of the amount required for each specific purpose within the appropriation, or items of appropriation, as made by the general assembly; and accounts shall be kept and reports rendered to the office of budget and management showing the expenditure for each such purpose. The office of budget and management shall exercise such control over items of appropriation accounts created by the general assembly, with respect to changes and adjustments therein within the general scope of a specific appropriation, as is committed to it by any act making appropriations, and shall in general exercise such control over the expenditure of appropriations, in addition to that specifically provided for in sections 126.01 to 126.07 of the Revised Code, as is so committed to it."

(Emphasis added.)

Consequently, the Office of Budget and Management is empowered to change items in appropriations accounts, only within the scope of the appropriation. It may not increase the total appropriation to a state department, or create a new appropriation.

A question similar to the instant one was considered in Corrugated Container Co. v. Dickerson, 171 Ohio St. 289 (1960).

In the appropriation act of 1959, the General Assembly had provided for the state insurance fund to reimburse the general fund for the entire costs of administering the Commission and Bureau. The Commission had then adopted a resolution giving effect to this provision. The Court noted that the language in the appropriations act was ambiguous, in that it did not specify which part of the state insurance fund should bear the expense. It noted further that the appropriation was in conflict with the general law. The Court stated at 291 as follows:

"Section 4123.341, Revised Code, defines administrative costs and provides that one-third thereof shall be paid from general revenues in order to discharge the state's obligation to render justice to employees and employers. Section 4123.342, Revised Code, provides that counties, taxing districts and private employers shall pay two-thirds of such costs.

"The policy of the state relative to the State Insurance Fund and administrative 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."

(Emphasis added.)

The instant fact situation is directly analogous. In fact, it presents an even stronger case for the application of these principles, because the General Assembly has not attempted to provide an additional appropriation for administrative costs.

Therefore, in specific answer to your question, it is my opinion and you are so advised that the Department of Administrative Services and 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. Disbursements from the state insurance fund for payment of such administrative costs are limited to those provided for in the appropriations act and R.C. 4123.341 and 4123.342.