

## OPINION NO. 83-029

**Syllabus:**

If the Director of Transportation reasonably finds it necessary for the efficient operation of his Department, he may establish a procedure for reimbursing Department employees for the loss, theft, or destruction of the employees' personal tools or equipment which are lost, stolen, or destroyed in the course of the owners' employment.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, June 10, 1983**

I have before me your opinion request concerning the authority of the Department of Transportation to compensate a state employee for the loss, theft, or destruction of his private equipment. Your request states that:

The Department of Transportation verbally requires its mechanics to provide their personal tools as a prerequisite to holding their positions. . . .

The Department of Transportation is currently submitting vouchers to the Office of the Auditor of State requesting payment be made to various Transportation employees to reimburse them for the cost of their lost, stolen or destroyed equipment.

In answering your question, I will assume that the employee's personal equipment has been lost, stolen, or destroyed while at the employee's job site and that such equipment was used in connection with the owner's employment.

The Department of Transportation, as a creature of statute, has only those powers expressly granted by statute or necessarily implied therefrom. See Burger Brewing Co. v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975). The Department is also bound by the principle that a public body may expend public funds only pursuant to clear statutory authority, and where such authority is of doubtful import, the doubt must be resolved against the expenditure. See State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916). Furthermore, public money may be expended only for a valid public purpose. Kohler v. Powell, 115 Ohio St. 418, 154 N.E. 340 (1926). As a general rule, where the legislature has specifically authorized the expenditure of funds for a particular purpose, such legislative determination is given great weight in examining the validity of such expenditure. See State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 98 N.E.2d 835 (1951). Whether the Department of Transportation may authorize payments to its employees in the circumstances set forth in your request depends, therefore, upon whether such authority is clearly granted by statute and, of course, upon whether

there is a valid public purpose underlying such expenditure. See 1981 Op. Att'y Gen. No. 81-048 at 2-190 ("a county board of mental retardation and developmental disabilities may not expend funds to reimburse its employees [for damage done by clients to the employees' personal property occurring while the employees are on duty] without specific statutory authorization to do so"). See also 1982 Op. Att'y Gen. No. 82-006 (discussing public purpose).

Since your question concerns payments to the Transportation Department's employees, it is first necessary to consider whether the Department may make such payments to its employees as part of their compensation. Employees of the Department of Transportation are state employees. The compensation of state employees is governed by a statutory scheme which is not subject to change by the various state appointing authorities. 1981 Op. Att'y Gen. No. 81-056; 1977 Op. Att'y Gen. No. 77-090. Because there is no statute which authorizes reimbursement of state employees as part of their compensation in the circumstances you describe, such reimbursement may not be made as a fringe benefit to Department of Transportation employees. Whether the Department may reimburse its employees for the replacement of the employees' equipment which has been lost, stolen, or destroyed in the course of their employment depends, therefore, upon whether the Department is otherwise authorized by statute to purchase tools for the private ownership of its employees.

Pursuant to R.C. 5501.40, the Director of Transportation may equip certain buildings with "the necessary tools and equipment for the care and repair of [the Department's] automobiles, trucks, machinery, and other equipment." R.C. 5513.03 authorizes the Director to delegate to district deputy directors the authority to "purchase materials, small tools, repair parts for machinery and equipment, and supplies at their respective offices." Ordinarily, where items are purchased with state funds, they become state property. See State ex rel. Williams v. Glander, 148 Ohio St. 188, 189, 74 N.E.2d 82, 83 (1947), cert. denied, 332 U.S. 817 (1947) (syllabus, paragraph three) ("[t]he personal property used by the Department of Liquor Control belongs exclusively to the state of Ohio"). The facts presented in your request, however, contemplate that the Department will purchase tools and equipment to replace those which the Department has required the employees to furnish for themselves, and that such tools will then be owned by the employees rather than by the Department. It does not appear, therefore, that the Director's authority to purchase tools pursuant to R.C. 5501.40 also authorizes the Director to purchase replacement tools and equipment for the Department's employees in the circumstances you describe.

Concerning the reimbursement of state employees for expenses incurred in the course of their employment, R.C. 141.15 specifically provides that any elected or appointed state officer or employee of any department, office, or institution of the state, whose compensation is paid in whole, or in part, from state funds, may be reimbursed for the actual and necessary traveling and other expenses incurred while traveling within the state on official business authorized by law or required in the performance of duties imposed by law. Similarly, pursuant to R.C. 5501.17, certain Department employees and appointees are entitled to receive, in addition to their salaries, "their actual necessary traveling expenses when on official business." I am not, however, aware of a statute which specifically addresses the reimbursement of state employees for the loss, theft, or destruction of their personal tools or equipment which they are required to use in the course of their employment.

Since no statute of which I am aware expressly authorizes the types of expenditures about which you ask, it is necessary to determine whether the Department has implied authority to make such expenditures. In 1979 Op. Att'y Gen. No. 79-054, my predecessor discussed the authority of a state department to negotiate and contract with labor organizations representing its employees. The opinion concluded that the Department of Mental Health and Mental Retardation had authority to negotiate and contract with labor organizations representing its employees, provided that the Department did not conduct its negotiations in a manner amounting to a delegation of executive responsibility or enter into contracts, the terms of which conflict with Ohio law. In examining the powers and duties of the Director of the Department of Mental Health and Mental Retardation,

my predecessor stated, at 2-174: "there is significant statutory support for a broad reading of his discretion in relation to employee matters." In support of this statement, the opinion cited the Director's authority to supervise and determine general policies for each of the Department's divisions, the fact that division chiefs and managing officers of institutions have executive charge of their divisions and facilities, respectively, and certain authority as to the appointment of employees, and the Department's power and authority to fully and efficiently exercise executive, administrative, and fiscal supervision over certain state institutions. The opinion did, however, recognize that the Department's authority to negotiate and contract excluded the authority to "[i]gnore, disobey, or negotiate contract terms which conflict with laws (or rules validly promulgated thereunder) relative to employee wages, hours, or working conditions." Op. No. 79-054 at 2-175. It is clear, therefore, that although the compensation of state employees is governed by a statutory scheme, which is not subject to change by the various state appointing authorities, state agencies do have some authority to prescribe working conditions for their employees. See generally Brown v. Department of Mental Health and Mental Retardation, No. 75-0496-AD (Ct. Cl. Ohio 1977) (since the Department had a reimbursement policy covering damage to personal property of its employees up to a fixed amount, which policy was part of the contract of employment, an employee whose watch was broken in the course of her employment was entitled to recover under the reimbursement policy).

Like the Director of the Department of Mental Health and Mental Retardation, the Director of Transportation has broad authority to control the operation of his Department and the duties of Department employees. For example, R.C. 5501.02 states:

All duties, powers, and functions conferred by law on the department of transportation and the divisions of the department shall be performed under such rules as the director of transportation may prescribe, and shall be under his control. Except as otherwise provided in this chapter as to appointments by deputy directors of divisions, the director shall appoint such employees of the department as are necessary, and shall prescribe their titles and duties.

In addition to other powers prescribed by statute, the director of each state department, including the Department of Transportation, may "prescribe regulations for the government of his department, the conduct of its employees, the performance of its business, and the custody, use, and preservation of the records, papers, books, documents, and property pertaining thereto." R.C. 121.07. Pursuant to this authority, directors may establish certain policies for their departments. See 1958 Op. Att'y Gen. No. 2512, p. 490 (director of state department has authority to establish policy of requiring its employees serving as jurors to remit their compensation as jurors to the fund from which their salaries are paid). R.C. 121.07, thus, gives the Director of Transportation authority to prescribe such regulations as he deems necessary for the government of his Department, the conduct of the Department's employees, and the preservation of property pertaining thereto.

The authority to establish a policy for reimbursing Department of Transportation employees in the manner you describe necessarily involves an examination of whether such reimbursement procedure would be a proper expenditure of public funds. In 1946 Op. Att'y Gen. No. 1016, p. 428 one of my predecessors discussed whether the Department of Highways, now the Department of Transportation, could pay the tuition of certain of its employees who enrolled in a welding class to improve their job performance. Since there was no specific statutory authorization for the Department to make such expenditure, the opinion examined whether the authority to make the expenditure was necessarily implied from any of the Department's other powers. The opinion stated at 430-31:

the expenditure of public funds is proper when they have some definite relationship or connection with the duties of the officer or employe [sic] as distinguished from his self-improvement or education. As suggested, when that expenditure is solely for the purpose of permitting a person to acquire general information or

knowledge with respect to the duties of his office or position, the expenditure is not a proper one. . . .

When the expenditure sought to be made was principally for the purpose of benefiting the individual, although perhaps indirectly for the benefit of the public, the authority so to do has invariably been denied. (Emphasis added.)

One criterion for determining whether a particular expenditure by a public employer for the benefit of an employee is proper is, therefore, whether the expenditure has a definite relationship to the employee's duties and whether the primary benefit is for the public rather than the employee.

A similar analysis was adopted in 1977 Op. Att'y Gen. No. 77-090, in which my predecessor discussed whether a state agency, which either possesses the power to acquire and operate parking facilities or has acquired possession and control of such facilities through an agency statutorily empowered to act in this area, could provide its employees with free parking. The opinion stated, at 2-305: "If the primary purpose in providing the facility is the convenience of the state agency rather than an intention to directly benefit its employees, the provision of free parking would not constitute a fringe benefit." The opinion then concluded at 2-305:

a state agency may not provide free parking to state employees as a fringe benefit. A state agency may, however, allow state employees to park free of charge on state property when it is necessary to the efficient operation of the state agency or when the acquisition and operation of the facility does not involve an additional direct monetary cost to the state.

Op. No. 77-090 qualified this conclusion by adding that since the decision to provide free parking to employees involves the expenditure of public funds, any doubt as to the authority to do so must be resolved against the expenditure. Accordingly, the opinion stated that where it is not clear that parking is a necessity or that the collection of fees to offset the cost of acquisition and operation of the facility is not feasible, parking should not be provided to the employees on a free basis. It is, therefore, apparent that an expenditure by a state agency may be proper if it is necessary to the efficient operation of the agency, even though an agency employee may indirectly benefit from such an expenditure.

Applying the principles set forth above to the situation you describe, I conclude that the Director of Transportation has broad authority to regulate the operations of his Department and to establish policies applicable to the Department's employees. Pursuant to this authority, if the Director should reasonably determine that it is necessary for the efficient operation of his Department for the Department to reimburse its employees in the manner set forth in your request, the authority to make expenditures for such reimbursement may be implied as necessarily incidental to the express powers discussed above.<sup>1</sup> In order to make such a determination the Director must, however, consider the relationship between the expenditures and the employees' duties and make certain that the primary benefit will accrue to the public, rather than to the individual employees.

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<sup>1</sup> It may be argued that since the General Assembly has expressly authorized the reimbursement of certain state employees for their actual and necessary traveling expenses and has not provided for reimbursement of Department of Transportation employees in the circumstances you describe, the General Assembly intends that state employees may be reimbursed only where there is express statutory authorization to do so, as for traveling expenses. In Brown v. Dep't of Mental Health and Mental Retardation, No. 75-0496-AD (Ct. Cl. Ohio 1977), however, the Court of Claims recognized the reimbursement policy adopted by the Department of Mental Health and Mental Retardation for its employees, and allowed the employee to recover pursuant to such policy.

Based on the foregoing, it is my opinion, and you are advised, that if the Director of Transportation reasonably finds it necessary for the efficient operation of his Department, he may establish a procedure for reimbursing Department employees for the loss, theft, or destruction of the employees' personal tools or equipment which are lost, stolen, or destroyed in the course of the owners' employment.