

996.

BY SECTION 1465-55a, GENERAL CODE AS AMENDED BY
HOUSE BILL 617—AUDITOR OF STATE—INSURANCE
FUND OF INDUSTRIAL COMMISSION.

SYLLABUS:

On and after the effective date of Section 1465-55a, General Code, as amended by House Bill 617, the Auditor of State will not be authorized or required to audit the state insurance fund of the Industrial Commission.

COLUMBUS, OHIO, August 11, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN :

Your letter of recent date is as follows:

"On May 14th, 1937, the Governor approved Sub. House Bill No. 617, which law appears to amend or repeal former Section 1465-55a.

Accordingly a question has arisen as to whether the rewriting of Section 1465-55a, precludes the Bureau of Inspection and Supervision of Public Offices from making the regular examination of the accounts of the State Industrial Commission, Insurance Fund, etc., in view of the fact that Sections 274 and 289, inclusive, of the General Code have been interpreted as requiring such regular examinations, and they provide for charging back to the departments and sub-divisions examined, the cost of such examinations.

It has always been held in the case of a city charter that provides for a continuous audit of such city by certified public accountants, for instance, that the Bureau was nevertheless required to make the examinations of the accounts of such a city.

May we request that you examine the statutes in question and advise us in answer to the following question:

Does the re-enactment of Section 1465-55a, as per Sub. House Bill No. 617, passed April 29th, 1937, relieve the Bureau of its duty under the provisions of Sections 274 to 289 G.C. to examine the accounts of the State Industrial Commission, Insurance Fund, etc., and to charge the cost of said examinations back to the department so examined and reported upon?"

Section 1465-55a, General Code, provides as follows:

"The auditor of state is hereby authorized and required to make a complete audit of the state insurance fund and the fund for the investigation and prevention of industrial accidents and diseases at such time as he may deem necessary. Such audit shall cover all moneys, securities, bonds, vouchers and transactions relative to such funds, and for such purpose the auditor or any examiners designated by him shall have access to the records and books of the industrial commission at any time, and the cost of such audit shall be a charge against the respective funds and shall be paid from said funds monthly upon vouchers certified by the auditor of state.

The auditor of state shall also prescribe forms of records and methods of accounting to be used by the industrial commission in connection with such state insurance fund and fund for the investigation and prevention of industrial accidents and diseases."

The foregoing section will be amended upon the effective date of Substitute House Bill 617, passed April 29 and filed in the office of the Secretary of State May 19, 1937, so that it will read as follows:

"The industrial commission is hereby authorized and required to have actuarial audits of the state insurance fund made from time to time as the industrial commission shall deem appropriate. At least one such audit shall be made between the date when this act becomes effective and December 31, 1938, and at least one such audit shall be made in each five-year period after the calendar year 1938. Such audits shall be made by recognized insurance actuaries who shall be selected in such manner as the industrial commission determines. Such audits shall cover the premium rates, classifications and all other matters involving the administration of the state insurance fund. The expense of such audits shall be paid from the state insurance fund."

The general provisions relating to examination and auditing of the accounts of all state offices are, as you indicate in your communication, contained in Sections 274, et seq., of the General Code, the first sentence of such Section 274 reading as follows:

"There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall

have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the State of Ohio."

In your letter you inquire as to whether or not your Bureau will be relieved of its duty under the provisions of Sections 274 to 289, General Code, to examine the accounts of the State Industrial Commission, insurance fund, etc. It is perfectly obvious that Section 1465-55a, supra, in its amended form, makes no reference whatsoever to anything but the state insurance fund. The amendment is entirely silent as to any other accounts of the Industrial Commission and there is no question but that the general provisions contained in Sections 274, et seq., General Code, relating to the powers and duties of your Bureau in inspecting and supervising the accounts and reports of state offices, the establishment of uniform systems of accounting, the requirement of reports, etc., are fully applicable to all funds and accounts of the Industrial Commission other than the state insurance fund. The question, however, remains as to whether or not Section 1465-55a, supra, as amended, will serve to constitute an exception to the general provisions of the earlier law requiring your Bureau to examine and audit that particular fund.

A determination of this question, like that of all questions of statutory construction, requires that the legislative intent in repealing such Section 1465-55a, providing that your Bureau audit the state insurance fund and substituting therefor an entirely new and different method whereby such fund shall be hereafter audited, be ascertained.

Section 1465-55a, in its present form and as amended, is an affirmative statute, as are generally Sections 274, et seq., General Code. The question becomes one of whether or not this affirmative statute shall be construed as to negative affirmative provisions on the same subject in the earlier general law. It is stated in Lewis' Sutherland Statutory Construction, Second Edition, Vol. I, page 472, 473:

"While an affirmative provision in one statute does not necessarily negative affirmative provisions on the same subject in the same or other statutes, yet affirmative words may and often do imply a negative, not only of what is not affirmed, but of what has been previously affirmed, and as strongly as if expressed. An affirmative enactment of a new rule implies a negative of whatever is not included, or is different; and if by the language used a thing is limited to be done in a particular

form or manner, it includes a negative that it shall not be done otherwise."

Citing decisions of the courts of last resort of Utah, Alabama and Kentucky, this same author states on page 474:

"A statute creating a board of public works for cities of the first class and conferring powers on such boards impliedly repeals so much of former statutes as confers the same powers upon the city councils. And generally an act vesting the control of a thing in one body or board is repealed by a subsequent act vesting the same control in another body or board."

It is my judgment that the foregoing principles of statutory construction are applicable to and dispositive of the question here under consideration. This is strengthened by a consideration of the fact that the General Assembly has expressly repealed the present provisions of the law requiring the Auditor to audit the state insurance fund.

It is accordingly my opinion, in view of the foregoing, that on and after the effective date of Section 1465-55a, General Code, as amended by House Bill 617, the Auditor of State will not be authorized or required to audit the state insurance fund of the Industrial Commission.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

997.

COUNTY BUDGET COMMISSION—POWER TO REDUCE ANY ITEM OR ITEMS IN ESTIMATE OF COUNTY BOARD OF HEALTH—FINANCIAL COORDINATING BODY.

SYLLABUS:

A county budget commission is the financial coordinating body of the county and possesses the power under Section 1261-40, General Code, to reduce any item or items in the estimate submitted by a county health board, even though the estimate was not submitted in accordance with Section 1261-40, but was submitted in the form of a request for funds