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WORKERS DISABILITY COMPENSATION ACT: State Accident Fund.

STATE ACCIDENT FUND: State agency.

CONSTITUTION OF MICHIGAN: Art 4, § 25.

The State Accident Fund is a state agency.

The provision in an appropriation act limiting the rate of compensation of employees of the State Accident Fund is in violation of Const 1963, art 4, § 25, which provides that no law may be revised, altered or amended unless the section or sections of the act altered or amended are re-enacted and published at length.

Opinion No. 5147

December 7, 1976.

Honorable John Engler
State House of Representatives
Capitol Building
Lansing, Michigan

You have requested my opinion on the validity of 1975 PA 318, §§ 27 and 28¹ which provide:

“(27) From the funds appropriated in section 1 for workmen’s compensation insurance premiums, not more than 15% of the premiums shall be used for reimbursement of administrative costs incurred by the state accident fund.

“(28) The commissioner of insurance and the advisory board of the state accident fund shall, under authority contained in section 418.741 of the Michigan Compiled Laws, terminate the employment of any employee of the state accident fund, established in section 418.701 of the Michigan Compiled Laws, who receives an annual salary in excess of \$35,000.00.”

To more fully examine the intent and effect of these sections, it is first necessary to consider the legislative history of the State Accident Fund.

The Michigan State Accident Fund was first authorized by 1912 PA (1st Ex Sess) 10, Part V, §§ 1 and 2, which provided:

“Section 1. Whenever five or more employers, who have become subject to the provisions of this act, and who have on their payrolls an aggregate number of not less than 3,000 employees, shall in writing request the Commissioner of Insurance so to do, he shall assume charge of levying and collection from them such premiums and dividends as may from time to time be necessary to pay the sums which shall become due their employees, or dependents of their employees, as compensation under the provisions of this act, and also the expense of conducting the administration of such funds; and shall disburse the same to the persons entitled to receive such compensation under the provisions of this act: Provided, however, That neither the Commis-

¹ This is an appropriations act.

sioner of Insurance nor the State of Michigan shall become or be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the funds so collected and received by him as hereinafter provided.

"Section 2. The Commissioner of Insurance shall immediately upon assuming the administration of the collection of disbursement of the monies referred to in the preceding section, *cause to be created in the State treasury a fund to be known as the 'accident fund'*. Each such employer shall contribute to this fund to the extent of such premiums or assessments as the Commissioner shall deem necessary to pay the compensation accruing under this act to employees of such employers or to their dependents, which premiums and assessments shall be levied in the manner and proportion hereinafter set forth. The Commissioner of Insurance shall give a good and sufficient bond in the sum of twenty five thousand dollars, executed by some surety company authorized to do business in the State of Michigan, covering the collection and disbursement of all monies that may come into his hands under the provisions of this act. The premium on said bond shall be paid out of the general funds of the State on an order of the auditor general. Said bond must be approved by the board of state auditors." (Emphasis added)

Since its original enactment there have been several major amendments to the Accident Fund. Most recently, the Workers Disability Compensation Act of 1969, 1969 PA 317, MCLA 418.101 *et seq*; MSA 17.237(101) *et seq* repealed 1912 PA (1st Ex Sess) 10, including Part V which first provided for the State Accident Fund. The current provisions with respect to the State Accident Fund are contained in Chapter 7, MCLA 418.701-418.755; MSA 17.237(701)-17.237(755). MCLA 418.701; MSA 17.237(701) provides:

"An accident fund is created to provide workmen's compensation insurance for employers under the supervision of the commissioner of insurance, herein referred to as the commissioner. *Upon compliance with the rules concerning insurance adopted by the commissioner, membership in and coverage by the fund shall be provided to employers subject to this act who shall request such membership and coverage of the fund in writing.* Thereupon the accident fund shall assume charge of levying and collecting from the employers such premiums or assessments as may be necessary from time to time to pay the sums which become due under the provisions of this act and also the expense of administration; and shall disburse such sums in accordance with the provisions of this act. Neither the commissioner nor the state shall be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the sums so collected and received." (Emphasis added)

MCLA 418.705; MSA 17.237(705) provides:

"There shall be maintained in the accident fund a sufficient amount of cash to pay current losses and expenses and the balance may be

invested by the commissioner and the state treasurer acting together, in such securities as are specified by law for investment by casualty insurance companies. All securities shall be purchased and may be sold at such time, in such manner and in accordance with such rules and conditions as may be prescribed by the joint action of the commissioner and the state treasurer. The commissioner shall give a good and sufficient bond in the sum of \$25,000.00 executed by a surety company authorized to do business in the state, covering the collection and disbursement of all monies that may come into his hands under the provisions of this act. The premium on the bond shall be paid out of the general funds of the state."

Thus, there is imposed upon the Insurance Commissioner the duty and responsibility to promulgate rules regulating the qualifications of employers to become employer-members of the State Accident Fund, and to determine and levy appropriate premiums and assessments upon employer-members. The Commissioner must include in his annual report a full and complete statement of the financial status of the Fund. MCLA 418.741; MSA 17.237(741).

Although the statute requires that the State Accident Fund be self-supporting, MCLA 418.711; MSA 17.237(711), the Commissioner and the State are by statute directly liable for the receipt and disbursement of the monies of the Fund to the extent that the monies are paid into the Fund. MCLA 418.701; MSA 17.237(701). Moreover, the Department of Insurance and the Insurance Commissioner are divisions of the Department of Commerce, having been transferred by a Type I transfer pursuant to the Executive Organization Act of 1965, 1965 PA 380, § 229; MCLA 16.329; MSA 3.29(229).

It must be noted that, despite the language of MCLA 418.741; MSA 17.237(741), to the effect that the Advisory Board "may authorize" such help "as may be necessary," the Commissioner is specifically authorized to employ deputies and assistants and clerical help and the Commissioner is further authorized to remove them. It is further observed that MCLA 418.751; MSA 17.237(751), authorizes the Commissioner to make the judgment as to whether it is "necessary to dissolve the Accident Fund." Certainly, the power and authority placed in the Insurance Commissioner by the legislature leaves little room to argue that the so-called "Advisory Board" or its "Executive Committee" are anything but advisory bodies to the Insurance Commissioner.

In *Advisory Opinion Re Constitutionality of PA 1966, No 346*; 380 Mich 554, 571; 158 NW2d 416, 423 (1968), the Court said:

"We must, as has been stated, look behind the name to the thing named. We must examine its character, its relation, and its functions to determine, indeed, whether it is an agency or instrumentality of State government. This examination leads us to a consideration of the purposes sought to be accomplished by the law. If those purposes are public purposes, if the work of the entity is a public work, then the state housing development authority is a state agency or instrumentality and its creation is a constitutional exercise of legislative power."

See OAG 1975-1976, No 4934, p . . . (May 5, 1976).

Clearly the statute creating the State Accident Fund complies with the above test. The Fund was created by the legislature; it has been delegated a portion of the sovereign power of government in that it has the power to make assessments of its members, including the State of Michigan; it has been conferred with certain powers, duties and discretion to be exercised under the supervision of the Insurance Commissioner, and it has exhibited permanency and continuity.

Thus, it is clear that the State Accident Fund is a state agency vested with the public purpose of providing worker's disability compensation insurance for state employers.² As a state agency, the Fund is subject to the constitutional and statutory restrictions imposed on all state agencies; it is subject to control by the state legislature and supervisory control of the Insurance Commissioner, and it also receives certain benefits by virtue of being a state agency, such as the ability to utilize the services of the State Treasurer to hold, invest, and disburse its funds, and the right of its employees to be members of the State Employees' Retirement Fund.³

The fact that the State Accident Fund is self-sustaining does not change this conclusion for, as stated in Opinion 4934, *supra*, regarding the Brown-McNeely Insurance Fund:

"The Brown-McNeely Insurance Fund was not created as a profit making venture but rather ' . . . to provide malpractice insurance to eligible providers . . .' MCLA 500.2502(1); MSA 24.12502(1). The generation of monies in the fund more than sufficient to pay all losses and expenses is a possibility inherent in insuring risk; consequently, the legislature wisely provided for the distribution of such monies.

"Such factors consequently do not militate against holding the Brown-McNeely Insurance Fund a state agency."

Having determined that the State Accident Fund is a state agency, it is clear that the legislature may control the authority and operations of the Fund and may, if it chooses to do so, disband the operation of the Fund completely. Also, employees of the Fund are state employees and, as such, are within the classified State Civil Service, Const 1963, art 11, § 5, *DeMaggio v Attorney General*, 300 Mich 207; 1 NW2d 530 (1942).

Nevertheless, it is apparent from a comparison of the two sections of the questioned appropriations act with the various sections of the Worker's Disability Compensation Act that there is an attempt by 1975 PA 318 to amend various provisions of the Worker's Disability Compensation Act. This attempt is in conflict with the provisions of Const 1963, art 4, § 25 as interpreted by the Michigan Supreme Court in *Alan v Wayne County*, 388 Mich 210; 200 NW2d 628 (1972) and OAG 1975-1976, No 4896, p . . . (September 9, 1975). These opinions exhaustively review the con-

² To the extent that this conclusion conflicts with any prior opinions of this office, such opinions are specifically overruled. See for example, opinion to Roger L. Wykes attached as an appendix; OAG 1941-1942, No 18772, p 117 (April 11, 1941).

³ OAG 1963-1964, No 4381, p 487 (October 26, 1964).

stitutional mandate that no law be revised, altered or amended by reference to its title only, but the section or sections of the act altered or amended must be re-enacted and published at length. This is clearly what §§ 27 and 28 of 1975 PA 318 have attempted to do and it is therefore my opinion that they are unconstitutional.

Since 1975 PA 318 does make appropriations for other branches of state government, it is clear that this bill would have been enacted without §§ 27 and 28. I conclude, therefore, that the remaining provisions of the bill are severable from the constitutionally infirm §§ 27 and 28.

FRANK J. KELLEY,
Attorney General.

761208.1

HIGHWAYS AND ROADS: Authority of county to expend funds to assist a city to make payments on bonds issued for reconstruction of a bridge.

COUNTIES: Authority of county to expend funds to assist a city to make payments on bonds issued for reconstruction of a bridge.

BONDS: Authority of county to expend funds to assist a city to make payments on bonds issued for reconstruction of a bridge.

A county may not use county funds to assist a city to make payments on a bond issued to finance the reconstruction of a bridge within the city.

Opinion No. 4992

December 8, 1976.

Mr. Jon Sheridan Shepherd
Prosecuting Attorney
Mason County
Mason County Courthouse
Ludington, Michigan 49431

You have requested my opinion as to the authority of a county to expend funds to assist a city to make payments on bonds issued to finance the reconstruction of a bridge within the city.

Your letter of request raises two questions which may be stated as follows:

1. Does a county commission have the authority to appropriate county funds to pay a portion of the cost of reconstruction of a highway bridge located entirely within a city in the county?
2. If so, does this permit the county to assume a portion of a city's established bonded indebtedness?

In November 1975 the City of Ludington, County of Mason, requested that the County Board of Commissioners authorize the use of county funds to assist the city in retiring an outstanding bonded indebtedness of \$175,000. The outstanding bonds are among those issued by Ludington in 1967 to finance the reconstruction of Washington Avenue Bridge within the city