

OFFICIAL OPINION No. 75-38

Coal and Clay Mine Subsidence Insurance Board—Insurance Department—Auditor General—Post-Audit.

1. By virtue of Article VIII, § 10 of the Pennsylvania Constitution, the Insurance Department may not carry out its statutory duty to post-audit the Coal and Clay Mine Subsidence Insurance Fund, since the Insurance Commissioner is a member of the Board administering the fund and is called upon to pre-approve its transactions.
2. The function of the Insurance Department as auditor not only conflicts with the Insurance Commissioner's primary duty to administer the fund, it is also unnecessary because the same post-audit function is required to be performed annually by the Auditor General.

Harrisburg, Pa.
November 5, 1975

Honorable Maurice Goddard
Chairman, Coal and Clay Mine Subsidence
Insurance Board
Harrisburg, Pennsylvania

Dear Chairman Goddard:

We have received your request for an opinion as to the legality of the Insurance Commissioner serving as a member of the Coal and Clay Mine Subsidence Insurance Board while at the same time being responsible for examining and auditing the Coal and Clay Mine Subsidence Insurance Fund, administered by the Board. It is our opinion, and you are hereby advised, that the Insurance Commissioner cannot properly audit the fund which he is responsible for administering as a member of the Board.

The Coal and Clay Mine Subsidence Insurance Board was created by the Legislature, Act of August 23, 1961, P. L. 1068 § 3, 52 P. S. § 3203, and consists of the Secretary of Environmental Resources, the Commissioner of Insurance, and the State Treasurer. The problem arises due to the audit function required of the Insurance Department by Section 14 of the aforesaid Act (52 P. S. § 3214):

“The Insurance Department at least once each year shall make a complete examination and audit of the affairs of the fund including all receipts and expenditures, cash on hand and securities, investments or property held representing cash or cash disbursements to ascertain its financial condition and its ability to fulfill its obligations, whether the board in managing the fund has complied with the provisions of law relating to the fund and the equity of the board's plans and dealings with its policyholders. . . .”

The validity of requiring a member of the Coal and Clay Mine Subsidence Insurance Board to audit the fund which he, as a member of the Board, shares in controlling is called into question by Article VIII, § 10 of the Pennsylvania Constitution:

“The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

“Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the function of auditing that transaction after its occurrence.”¹

The Insurance Commissioner as a member of the Coal and Clay Mine Subsidence Insurance Board exercises a one-third control of the fund and his vote in favor of an expenditure of the fund represents its approval, thereby invoking the constitutional prohibition against post-auditing the same transaction.

The function of the Insurance Department as auditor not only conflicts with the Insurance Commissioner’s primary duty to administer the fund, it is also unnecessary. The post transaction audit performed by the Department is identical in nature and purpose to the post transaction audit performed by the Auditor General. Section 13 of the Act, 52 P. S. § 3213 requires, in part:

“The Auditor General through such agents as he may select shall, during the calendar year, make a complete examination and audit of the fund including all receipts and expenditures, cash on hand and securities, investments or property held representing cash or cash disbursements. . . .”

This language is almost identical with that of the statutory provision giving the auditing responsibility to the Insurance Department.

Therefore, since the auditing function of the Insurance Commissioner as head of the Insurance Department is prohibited by the Pennsylvania Constitution in view of his membership on the Board, and since the Auditor General is charged with the same duty to audit the fund annually, it must be concluded that the Insurance Commissioner retains his position as a member of the Board but he must give up the auditing duties of his department.

Accordingly, it is our opinion, and you are advised, that the Insurance Department may no longer conduct audits of the Coal and Clay Mine Subsidence Insurance Fund.

This opinion has been discussed with counsel to the Auditor General who concurs in our conclusion. A copy of the opinion will be forwarded

1. The following statutory provision was passed to implement the second paragraph of Article VIII, § 10: “No officer of this Commonwealth charged with the function of auditing transactions after their occurrence shall approve the same transactions prior to their occurrence.” Act of March 18, 1971, P. L. 110, 72 P. S. § 404.

to Insurance Commissioner Sheppard. A similar opinion concerning the Insurance Commissioner's statutory responsibility to audit the State Workmen's Insurance Fund is being submitted to Commissioner Sheppard reaching the same result.*

Very truly yours,

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Deputy Attorney General

VINCENT X. YAKOWICZ
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OFFICIAL OPINION No. 75-39

Education—School Code—Expenses.

1. Section 516 of the Public School Code, 24 P. S. § 5-516.1 does not permit members of the boards of school directors to be reimbursed for lost wages resulting from attendance at educational conventions.

Harrisburg, Pa.
November 5, 1975

Hon. John C. Pittenger
Secretary of Education
Harrisburg, Pennsylvania

Dear Secretary Pittenger:

You have requested our opinion as to whether members of boards of school directors are entitled to reimbursement for lost wages in instances where they attend educational conventions. It is our opinion, and you are advised, that school directors are not entitled to reimbursement for lost wages resulting from attendance at educational conventions. Section 516 of the Public School Code, as amended, 24 P. S. § 5-516.1 permits members of boards of school directors to be reimbursed "for all expenses actually and necessarily incurred in going to, attending and returning from the place of such meeting, including travel, travel insurance, lodging, meals, registration fees and other incidental expenses necessarily incurred, but not exceeding thirty dollars (\$30.00) per day for lodging and meals."

In order to reach an opinion on the question you raised, it becomes important to determine the meaning of the terms "all expenses actually and necessarily incurred" and "other incidental expenses necessarily incurred."

I. The Statutory Construction Act of 1972 provides that words and phrases shall be construed "according to their common and approved usage." (1 Pa. C. S. § 1903). The dictionary definitions of the terms

*Editor's note: See Opinion No. 75-44, *infra*.