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1. UTILITY, PUBLICLY OWNED — QUALIFIED AND GRANTED AUTHORITY BY INDUSTRIAL COMMISSION TO BECOME SELF-INSURER — IN CATEGORY OF PUBLIC EMPLOYER, PURPOSE TO PAY INTO SURPLUS FUND— CONTRIBUTIONS—ACCREDITED TO PUBLIC FUND, NOT PRIVATE FUND—SECTIONS 1465-69, 1465-54, 1465-59 G. C.

2. STATUS WHERE UTILITY DOES NOT ELECT TO QUALIFY AS SELF-INSURER.

3. WHERE CITY PURCHASED PRIVATELY OWNED STREET RAILWAY COMPANY, QUALIFIED AND ACCEPTED, SELF-INSURED RISK BY INDUSTRIAL COMMISSION—CITY BY ORDINANCE ASSUMED ALL WORKMEN'S COMPENSATION OBLIGATIONS OF PREDECESSOR — PRIVATELY OWNED UTILITY — INDUSTRIAL COMMISSION MAY TRANSFER OLD RISK TO NEW RISK—PUBLICLY OWNED UTILITY.

4. INDUSTRIAL COMMISSION HAS AUTHORITY TO REQUIRE PUBLICLY OWNED UTILITY TO FURNISH BOND AS PREREQUISITE TO QUALIFY AS SELF-INSURER.

SYLLABUS:

1. A publicly owned utility which qualifies and is granted authority by the Industrial Commission to become a self-insurer, under and by virtue of Section 1465-69, General Code, as amended by House Bill Number 352, effective August 16, 1943, remains in the category of a public employer for the purpose of paying into the surplus fund created by Section 1465-54, General Code, and contributions so made shall be accredited to the public fund, and not the private fund, pursuant to Section 1465-59, General Code.

2. A publicly owned utility which does not elect to qualify before the Industrial Commission to become a self-insurer, under and by virtue of Section 1465-69, General Code, as amended by House Bill Number 352, effective August 16, 1943, remains in the category of a public employer for the purpose of paying premiums required by Section 1465-63, General Code, and such premiums, together with its contributions to be accredited to the surplus fund created by Section 1465-54, General Code, shall be payable into the public fund, and not the private fund, pursuant to Section 1465-59, General Code.

3. Where a city has lawfully purchased all the assets of every kind and description of a privately owned street railway company; has qualified and been accepted by the Industrial Commission to become a self-insured risk, under and by

virtue of Section 1465-69, General Code, as amended by House Bill Number 352, effective August 16, 1943; and by ordinance has assumed all the workmen's compensation obligations of the predecessor—privately owned utility, the Industrial Commission may transfer the old risk of the privately owned utility to the new risk of the successor—publicly owned utility.

4. The Industrial Commission has authority to require a publicly owned utility to furnish bond as a prerequisite to qualifying as a self-insurer, under and by virtue of Section 1465-69, General Code, as amended by House Bill Number 352, effective August 16, 1943.

Columbus, Ohio, December 21, 1943.

Hon. Will T. Blake, Chairman of the Industrial Commission,
Columbus, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

> "The Cleveland Transit System of the City of Cleveland, Ohio, has made application to The Industrial Commission of Ohio for authority to pay compensation, etc., direct, under the provisions of Section 1465-69 Ohio General Code, as amended by House Bill Number 352. The authority for the action taken by the Cleveland Transit System of the City of Cleveland, Ohio, is contained in Resolution Number 560-43 of the City of Cleveland, a copy of which is hereto attached and marked 'Exhibit A'.
>
> We are also attaching hereto a copy of a Resolution by The Industrial Commission of Ohio, dated August 17, 1943, approving the application of the Cleveland Transit System of the City of Cleveland, Ohio, under the provisions of Section 1465-69 Ohio General Code, as amended, 'to pay individually such compensation, * * * ' etc., and marked 'Exhibit B'.
>
> Section 1465-69 of the Ohio General Code, as amended by House Bill Number 352, passed April 26, 1943, approved by the Governor May 14, 1943, filed in the Office of the Secretary of State May 15, 1943, and, according to our calculation, became effective on August 14, 1943. A copy is hereto attached and marked 'Exhibit C'. This section of the Ohio General Code formerly mentioned 'employer'. It has now been changed to include 'employer and public owned utilities'.
>
> If it is proper for said Cleveland Transit System of the City of Cleveland to become what is commonly known as a 'self-insured employer' they are required by Section 1465-69 Ohio General Code to ' * * * pay into the State Insurance Fund such amount or amounts as are required to be credited to the surplus

in paragraph 2 of Section 1465-54 Ohio General Code'. (This amount is at this time 2% of the total amount of premiums.)

Section 1465-60 Ohio General Code provides in part as follows:

'The following shall constitute employers subject to the provisions of this act:

1. The state and each county, city, township, incorporated village and school district therein.

2. Every person, firm and private corporation, including any public service corporation, that has in service three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract or hire, express or implied, oral or written. * * *'

Section 1465-59 Ohio General Code provides in part as follows:

'The money contributed by the employers mentioned in subdivision one of Section 1465-60 shall constitute and be called the public fund and the money contributed by employers mentioned in subdivision two of Section 1465-60 shall constitute and be called the private fund and each such fund shall be collected, distributed and its solvency maintained without regard to or reliance upon the other. * * * '

Section 1465-54 Ohio General Code provides in part as follows:

'It shall be the duty of The Industrial Commission of Ohio, in the exercise of the powers and discretion conferred upon it in the preceding section, ultimately to fix and maintain, for each class of occupation or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death that it may authorize to be paid from the state insurance fund for the benefit of injured and the dependents of killed employees; * * *.'

Section 1465-65 Ohio General Code provides in part as follows:

'Before the 15th day of January, each year, the chief fiscal officer of each taxing district in a county shall furnish to the county auditor a report showing the amount of money expended by the district during the preceding calendar year for the services of employes under the Workmen's Compensation Law, and the county auditor of each county shall prepare on forms furnished by The Industrial Commission and file, in the month of January of each year, with The Industrial Commission, a list in triplicate

showing the amount of money expended during the preceding calendar year by the county and the several taxing districts therein, for the services of all employes under the Workmen's Compensation Law; said officer and auditor shall furnish at any time such other information in respect to matters affecting contributions as the Commission may require. * * * '

Section 1465-66 Ohio General Code provides in part as follows:

'Each county auditor, immediately following receipt of the certificate mentioned in section 1465-65 shall issue his warrant in favor of the treasurer of state of Ohio on the county treasurer of his county, for such county and the taxing districts therein, * * * '

The purpose of the above excerpts from the Ohio General Code is to show the division in the method of payments to the Industrial Commission by private and public employers.

It would, therefore, seem that since by the amendment of Section 1465-69 Ohio General Code that it was the intent of this amendment to take a public employer out of the category which it formerly occupied and place it in the category occupied by a private employer. It appears that in order to accomplish these results The Industrial Commission of Ohio will have to apply all of the provisions of the Ohio Workmen's Compensation Act, which apply to a private employer rather than to apply those Sections of the General Code which have heretofore been applied to public employees to accomplish this purpose.

The second question in the Commission's Resolution of August 17, 1943, therefore, embodies the following:

Is the money to be paid into the State Insurance Fund by the Cleveland Transit System under the provisions of Section 1465-69 Ohio General Code to be arrived at under the instructions contained in Section 1465-65 Ohio General Code or Section 1465-54 Ohio General Code?

The Cleveland Railway Company before April 29, 1942, was a privately owned public utility, and with reference to the Workmen's Compensation Law it operated as a self-insurer under the provisions of the old Section 1465-69 Ohio General Code.

If The Industrial Commission of Ohio is permitted to transfer the risk of the Cleveland Railway Company to Cleveland Transit System of the City of Cleveland, it also means the transfer to Cleveland Transit System the classifications formerly assigned to the Cleveland Railway Company. On these classifications the amount of premiums are calculated, which are eventually credited to the surplus created by Section 1465-54 General Code.

The amended section of 1465-69 Ohio General Code provides for the furnishing of bond to The Industrial Commission of Ohio in an amount fixed by said Industrial Commission for the purpose of rendering certain the payment of compensation, medical expenses, etc., to injured workmen. No bond is required under the provisions of those sections of the Workmen's Compensation Law applying to the coverage of various political subdivisions or taxing districts.

The specific questions, answers of which will greatly assist this Commission in the application of the amended Section 1465-69 Ohio General Code to the first applicant for coverage thereunder, filed by the Cleveland Transit System of the City of Cleveland, are as follows:

1. Does this amended Section 1465-69 General Code remove a public owned utility, which has made application and has been granted authority to become a self-insured risk, from the entire category of a public employer with reference to the Workmen's Compensation Law, and place them in the category of a private employer?

2. Is The Industrial Commission of Ohio authorized to require the Cleveland Transit System to furnish bond under the provisions of Section 1465-69 Ohio General Code as it does private employers?

3. Is the money contributed by the Cleveland Transit System of the City of Cleveland to be paid into the surplus fund created by Section 1465-54 Ohio General Code or the private fund, to which all private self-insuring employers contribute in common?

4. Is there created by Section 1465-54 a surplus fund in the public fund to which a self-insuring publicly owned utility should contribute?

5. In paying into the surplus created by Section 1465-54 shall the amount of such payment be governed by the classifications and rates established under Section 1465-53 or the classifications and rates established under Section 1465-63?

6. For the purpose of arriving at the amount of premium to be credited to the surplus fund, is it proper for The Industrial Commission of Ohio to transfer the Old Risk of the Cleveland Railway Company to the New Risk of the Cleveland Transit System?

7. Does this amendment to Section 1465-69 Ohio General Code make all public owned utilities separate entities from the political subdivision which may own them, and make the premiums

paid by them into the State Insurance Fund payable into the private fund?

It will be necessary for us to hold the application of the Cleveland Transit System for your instructions."

The resolution adopted by the Industrial Commission, under date of August 17, 1943, reads as follows:

"This matter came on for hearing on the communication of Mr. E. I. Evans, Actuary, dated August 9, 1943, copy of which is hereto attached and made a part hereof.

WHEREAS, after duly considering the matter the Commission finds that the application of Cleveland Transit System of the City of Cleveland, for permission to pay compensation, etc., direct, as provided by Section 1465-69 of the General Code as amended by House Bill 352, passed by the General Assembly, approved by the Governor, and filed with the Secretary of State on the 15th day of May 1943, and effective as of August 16, 1943, and also that it is shown to the Commission's satisfaction that said Cleveland Transit System is of such financial ability as to render certain the payment of compensation to its injured employes and the dependents of its killed employes, and the furnishing of medical, surgical, nursing, hospital and funeral expenses equal to or greater than is provided for by the laws of Ohio.

NOW, THEREFORE, BE IT RESOLVED that said Transit System's application be accepted, and its permission thereunder become effective on August 16, 1943, as requested in said application.

Be it further resolved that the matter as to whether the premium assessed against and paid by the Transit Company shall be paid into the Public Employe's Fund or into the Private Employe's Fund, and the question of the propriety of assigning to the Transit Company's insurance the risk number of its operative-predecessor, Cleveland Railway Company, to be referred to the Attorney General for his opinion thereon.

Upon receipt of said opinion the Commission to take the action shown by the opinion to be appropriate."

I shall discuss the questions posed by your letter seriatim. Your first question inquires whether or not the force and effect of Section 1465-69, General Code, as amended by House Bill Number 352, passed by the General Assembly April 26, 1943, and effective August 16, 1943, removes a publicly owned utility, which has been granted authority to become a

self-insured risk, from the entire category of a public employer and place it in the category of a private employer.

Section 1465-69, General Code, as amended by House Bill Number 352, reads as follows:

> "Except as hereinafter provided, every employer mentioned in subdivision 2 of section 1465-60, General Code, and publicly owned utility shall, in the month of January, 1914, and semi-annually thereafter, pay into the state insurance fund the amount of premium determined and fixed by the industrial commission of Ohio for the employment or occupation of such employer the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by said commission; and such employer shall semi-annually thereafter pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of said commission, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the industrial commission of Ohio, which receipt or certificate, attested by the seal of said commission, shall be prima facie evidence of the payment of such premium. * * *
>
> Provided, however, that as to all employers who were subscribers to the state insurance fund prior to January 1, 1914, or who may first become subscribers to said fund in any other month than January or July, the foregoing provisions for the payments of such premiums in the month of January, 1914, and semi-annually thereafter shall not apply, but such semi-annual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. And provided further, that such employers and publicly owned utilities who will abide by the rules of the industrial commission of Ohio and as may be of sufficient financial ability to render certain the payment of compensation to injured employes or the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in sections 1465-78 to 1465-89, General Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, may, upon a finding of such fact by the industrial commission of Ohio, elect to pay individually such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; and the industrial commission of Ohio may require such security or bond from said employers and publicly owned utilities as it may deem proper, adequate and sufficient to compel or secure to such injured employes, or to the dependents of such employes as may be killed, the payment of the compensation and expenses herein

provided for, which shall in no event be less than that paid or furnished out of the state insurance fund, in similar cases, to injured employes or to dependents of killed employes, whose employers contribute to said fund, except when an employe of such employer, who has suffered the loss of a hand, arm, foot, leg, or eye, prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of said members as the result of any injury sustained in the course of and arising out of his employment, the compensation to be paid by such employer and publicly owned utility shall be limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the Industrial Commission of Ohio, out of the surplus created by section 1465-54 of the General Code. Should municipal or other bonds be accepted by said commission as security for said payments, such bonds shall be deposited with the treasurer of state whose duty it shall be to have custody thereof and to retain the same in his possession according to the conditions prescribed by the order of said commission accepting the same as security, and said treasurer shall retain possession of said bonds until such time as he may be directed by said commission as to the mode and manner of his disposition of the same; and said commission shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify such finding of fact by said commission as to permit such election by such employers and publicly owned utilities, which rules and regulations shall be general in their application, one of which rules shall provide that all employers including publicly owned utilities, electing directly to compensate their injured and the dependents of their killed employes as hereinbefore provided, shall pay into the state insurance fund such amount or amounts as are required to be credited to the surplus in paragraph No. 2 of section 1465-54, General Code. The industrial commission of Ohio may at any time change or modify its findings of fact herein provided for, or revoke the right of such employer or publicly owned utility to pay compensation direct, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of the law in reference to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured and the dependents of killed employes."

A consideration of your first question logically invites a brief review of Sections 1465-53, 1465-54, 1465-59, and 1465-60, of the Workmen's Compensation Act, which construed together, reveal the nature, extent, purposes and subdivisions of the state insurance fund.

Section 1465-53, General Code, provides that the Industrial Commission shall classify occupations or industries with respect to degree of hazard, determine risks of different classes, and fix rates of premium

sufficient to maintain an adequate *state insurance fund.* The pertinent portion of that section reads as follows:

> "The industrial commission of Ohio shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of said classes of occupation or industry sufficiently large to provide an adequate fund for the compensation provided for in this act, and to maintain *a state insurance fund* from year to year, * * *." (Emphasis mine.)

Section 1465-54, General Code, provides that the Industrial Commission shall fix the lowest rates of premium as shall be consistent with the maintenance of *"a solvent state insurance fund"* and *"the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death".* This section then continues to provide, in part, as follows:

> "Ten per cent of the money that has heretofore been paid into the state insurance fund and ten percent of all that may hereafter be paid into such fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars ($100,000.00) after which time, whenever necessary in the judgment of the industrial commission to guarantee *a solvent state insurance fund,* a sum not exceeding five per cent of all the money paid into the state insurance fund shall be credited to such surplus fund. * * * " (Emphasis mine.)

You have informed me that the Commission, under its rules, currently assesses two per cent (2%) of all moneys paid into the state insurance fund to be credited to the surplus fund.

Section 1465-59, General Code, which provides that the moneys collected into the state insurance fund shall be divided into a *public fund* and a *private fund,* reads, in part, as follows:

> "The money contributed by the employers mentioned in subdivision one of section 1465-60 shall constitute and be called the *public fund* and the money contributed by employers mentioned in subdivision two of section 1465-60 shall constitute and be called the *private fund* and each such fund shall be collected, distributed and its solvency maintained without regard to or reliance upon the other. Whenever in this sub-chapter reference is made to the state insurance fund, such reference shall be construed to have been made to such two separate funds. * * * " (Emphasis mine.)

The controlling designation of what constitutes the *public fund* and

what constitutes the *private fund,* therefore, is to be elicited from Section 1465-60, General Code, which reads in part as follows:

> "The following shall constitute employers subject to the provisions of this act:
>
> 1. The state and each county, *city,* township, incorporated village and school district therein.
>
> 2. Every person, firm and private corporation, including any public service corporation, that has in service three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract or (of) hire, express or implied, oral or written. * * *" (Emphasis mine.)

An examination of the foregoing sections of the Workmen's Compensation Act, and particularly Section 1465-60, General Code, quoted immediately above, impels me to inquire whether The Cleveland Transit System, now owned by the City of Cleveland, is embraced in the category designated by subdivision one of Section 1465-60, or in the category designated by subdivision two of that section.

A resort to the rules of statutory construction seems quite unnecessary in resolving this question, inasmuch as the language of subdivision one is clear and unambiguous, and includes within its terms the word "city".

Section four of Article XVIII of the Constitution of the State of Ohio provides for the acquisition of "any public utility" by "any municipality". The City of Cleveland, having acquired the Cleveland Transit System by purchase from The Cleveland Railway Company, the conclusion appears to be irresistible that the Transit System is now as much a part of the City of Cleveland as a municipally owned waterworks, gas plant or hospital.

Having determined that The Cleveland Transit System comes within the purview of subdivision one of Section 1465-60, General Code, it follows that the surplus assessments mentioned in next to the last sentence of Section 1465-69, General Code, as amended, should be accredited to the public fund, unless the provisions of Section 1465-69, General Code, as amended, have the effect of repealing by implication the provisions of Section 1465-60, General Code, and cognate sections.

In approaching this crucial question, it is first relevant to note that repeals by implication are not favored in law. A succinct statement of this proposition is contained in Dodge v. Gridley, 10 O. S. 178, where it is said:

> "Where two affirmative statutes exist, one is not to be construed to repeal the other by implication, unless they can be reconciled by no mode of statutory construction."

Moreover, it has been a long settled rule of statutory construction that statutes relating to one subject should be construed together, and, whenever possible, should be accorded a consistent and harmonious interpretation. In Sutherland on Statutory Construction, in Section 288, it is said:

> "It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions. For the purpose of learning the intention, all statutes relating to the same subject are to be compared, and so far as still in force brought into harmony, if possible by interpretation."

See Street Railway v. Pace, 68 O. S. 200; City of Cincinnati v. Guckenberger, 60 O. S. 353.

That this latter rule of construction should be liberally applied where a new enactment of a fragmentary nature is involved is significantly discussed in Volume 37 of Ohio Jurisprudence, at page 665, where the following principle is enunciated:

> "As a general rule, where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be construed so as to harmonize with the general tenor or purport of the system unless a different purpose is plainly shown."

In applying the foregoing rules of construction, I have little difficulty in arriving at the conclusion that amended Section 1465-69, General Code, does not remove a publicly owned utility, which has been granted authority to become a self-insured risk, from the category of a public employer within the purview of the Workmen's Compensation Act.

This conclusion is immeasurably strengthened, of course, by the fact that the Cleveland Transit System is not only invested with great public interest, but is now owned in its entirety by the City of Cleveland. The City of Cleveland is the owner of all its assets of every kind and description; it will participate in its profits, if any; it will be compelled to underwrite its losses, if any. Therefore, it would hardly seem consistent and in harmony with the public interest that the money assessed the Cleveland

Transit System, to be accredited to the surplus fund, should be commingled with the assets of the private surplus fund which finally, either directly or indirectly, inure to the benefit of private employers.

Coming then to your second question, Section 1465-69, General Code, as amended, specifically provides that "the industrial commission of Ohio may require such security or bond from said employers *and publicly owned utilities* as it may deem proper, adequate and sufficient". That a municipality exercising a proprietary function may exercise its powers as would an individual or private corporation has been well settled through a long line of decisions. The case of Travelers Insurance Company v. Wadsworth, 109 O. S. 440 aptly exemplifies the principle involved, and the second branch of the syllabus thereof reads as follows:

> "The power to establish, maintain, and operate a municipal light and power plant, under the Constitution and statutes aforesaid, is a proprietary power, and in the absence of specific prohibition, the city acting in a proprietary capacity may exercise its powers as would an individual or private corporation."

The answer, therefore, to your second inquiry is in the affirmative.

The answer to your third question is in the negative, having been disposed of in my discussion of your first inquiry.

Your fourth question, likewise, has been resolved in the affirmative by the principles discussed responsive to your initial question.

Similarly, in answer to question five, the conclusions arrived at responsive to question one would a fortiori require that the amount of payment by The Cleveland Transit System should be governed by the classifications and rates established under Section 1465-63, General Code, which sets forth the manner and mode of payment to be made into the public fund.

Replying to your sixth question, it is relevant to observe that the city of Cleveland, in acquiring The Cleveland Railway company, purchased *all* its assets of every kind, nature and description. As a part of such assets it has acquired $115,000 in United States Treasury Bonds which were heretofore deposited with, and hypothecated to, the Treasurer of the State of Ohio by The Cleveland Railway Company, as security for the performance by it of its obligations as a self-insurer, and which remain in the custody of the Treasurer of the State of Ohio as security for the performance by The Cleveland Transit System of its obligations as a self-insurer and the successor in interest of the Cleveland Railway Company.

Furthermore, the City of Cleveland, by Ordinance No. 1311-41, has assumed all the former workmen's compensation obligations of the Cleveland Railway Company prior to its acquirement by the Cleveland Transit System, and the City of Cleveland has continued the payment of such workmen's compensation obligations through its publicly owned Cleveland Transit System. I have been further informed that the executive personnel of The Cleveland Railway Company has been largely retained by The Cleveland Transit System and that broad policies of the private company are, in so far as feasible and practicable, being embraced by the successor Transit System.

In view of these factors, it would appear to conform to the public interest that The Cleveland Transit System be accorded the opportunity to benefit by the favorable industrial experience of The Cleveland Railway Company by transferring the old risk of The Cleveland Railway Company to the new risk of The Cleveland Transit System.

Your final inquiry leaves for consideration the question of whether publicly owned utilities which do not qualify to become self-insured risks, should pay premiums into, and have a division of their contributions made accredited to, the private fund or the public fund.

The principles discussed under question number one apply with equal force to the resolution of this question. I note, however, that the phrase, "publicly owned utility" is incorporated in the first paragraph of Section 1465-69, General Code, as amended, while the true intent of the legislature would have been exemplified with greater clarity had it been omitted. Nevertheless, since it is apparent that the legislative intent was undoubtdly directed to amending the statute only to the extent of permitting publicly owned utilities to qualify to become self-insurers, I have little hesitancy in interpreting the meaning of the amendment to conform to the evident legislative intent. It is pertinently observed in Volume 37 Ohio Jurisprudence, at page 770:

> "The rule giving new operation and effect to a statute which has been changed in terminology by amendment is not of universal application. A change in the terms of the statute does not necessarily result in a change in the meaning thereof. It does not so result where the context indicates that such change in effect was not within the contemplation of the general assembly."

Furthermore, this conclusion is strengthened by a reference to the preamble to the amendment of Section 1465-69, General Code, which states as follows:

> "To amend sections 1465-69, 1465-69a and 1465-69b of the General Code, to provide for direct payment of compensation, etc., by publicly owned utilities."

The importance to be attached to the preamble of a statute was evaluated by Lord Chief Justice Tindall in the Dukedom of Sussex Case, 8 London Jurisprudence, 797, where he stated:

> "If any doubts arise from the language employed by the legislature, it has always been held as a safe means of collecting the intention, to call in aid the *ground and cause of making the statute,* and to have recourse to the preamble, which, according to Chief Justice Dyer, is a key to open the minds of the makers of the act, and the mischiefs they intended to redress."

See also Turley v. Turley, 11 O. S. 173; Sedgwick on Statutory Law, 239; 37 Ohio Jurisprudence, 685.

The categorical answer to your final inquiry is, therefore, in the negative.

In conclusion it is my opinion that:

1. A publicly owned utility which qualifies and is granted authority by the Industrial Commission to become a self-insurer, under and by virtue of Section 1465-69, General Code, as amended by House Bill Number 352, effective August 16, 1943, remains in the category of a public employer for the purpose of paying into the surplus fund created by Section 1465-54, General Code, and contributions so made shall be accredited to the public fund, and not the private fund, pursuant to Section 1465-59, General Code.

2. A publicly owned utility which does not elect to qualify before the Industrial Commission to become a self-insurer, under and by virtue of Section 1465-69, General Code, as amended by House Bill Number 352, effective August 16, 1943, remains in the category of a public employer for the purpose of paying premiums required by Section 1465-63, General Code, and such premiums, together with its contributions to be accredited to the surplus fund created by Section 1465-54, General Code, shall be payable into the public fund, and not the private fund, pursuant to Section 1465-59, General Code.

3. Where a city has lawfully purchased all the assets of every kind and description of a privately owned street railway company; has qualified and been accepted by the Industrial Commission to become a self-insured risk, under and by virtue of Section 1465-69, General Code, as amended

by House Bill Number 352, effective August 16, 1943; and by ordinance has assumed all the workmen's compensation obligations of the predecessor —privately owned utility, the Industrial Commission may transfer the old risk of the privately owned utility to the new risk of the successor— publicly owned utility.

4. The Industrial Commission has authority to require a publicly owned utility to furnish bond as a prerequisite to qualifying as a self-insurer, under and by virtue of Section 1465-69, General Code, as amended by House Bill Number 352, effective August 16, 1943.

Respectfully,

THOMAS J. HERBERT,
Attorney General.