OPINION NO. 84-036

Syllabus:

1. Any state officer, administrative head of a state department or agency, and any state board or commission with the power, express or implied, to employ has the authority under state law to assume and pay employees' contributions to the Public Employees Retirement System under a "salary reduction" plan. Any such plan must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

2. An elected state officer may under state law participate in a "salary reduction" pick up plan. Any such plan must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

3. Any local governmental authority with the power to employ may under state law implement a "salary reduction" pick up plan for employees and for the appointing authority itself. Any such plan must be qualifed with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

4. A state officer, administrative head of a department or agency, state board or commission may not implement a "pick up in lieu of salary increase" plan for employees unless such pick up is part of a collective bargaining agreement. Any plan adopted as part of a collective bargaining agreement must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

5. State elected officers are not authorized to participate in a "pick up in lieu of salary increase" plan.

6. Any local governmental authority with the power to compensate its employees may under state law implement a "pick up in lieu of salary increase" plan for its employees, although those officers whose compensation is set by statute may not participate in the plan, and those officers who are subject to either Ohio Const. art. II, §20 or a similar local provision are not entitled to participate in the plan if such plan was instituted after the commencement of the officer's term. Any such plan must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

7. If an officer or employee is paid in part by the state and in part by a unit of local government, and if one of the employing authorities picks up the officer's or employee's retirement contribution, the other employing authority is not required to pick up the retirement contribution.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1984

I have before me your request for my opinion on several questions concerning the implementation of a "pick up" plan for public employees under which a public employer would assume and pay contributions to the Public Employees Retirement System (PERS) on behalf of employees when such contributions are otherwise the duty of employees pursuant to R.C. 145.47.

Your specific questions are as follows:

1. May an individual appointing authority of state government implement a "pick up" plan on behalf of his employees where no additional cost is incurred?

2. If the appointing authority is an elected state officer, such as the Attorney General, Treasurer of State, Auditor of State, Secretary of State, Lieutenant Governor, or Governor, may he be included in the "pick up" plan?

3. What agency may implement such a "pick up" plan for officers and employees of units of local government?

4. To what extent is your answer to questions 1-3, above, affected by the fact that a proposed plan called for the actual payment of the employees' contributions by the employer, representing a cost over and above the employees' normal salary? Your attention is directed to Article II, Section 20, and Article IV, Section 6, Ohio Constitution.

5. If an officer or employee is paid in part by a unit of local government and in part by the state government, may they treat the different portions of this compensation differently for PERS purposes, as set forth herein, or must their treatment be uniform?

At the start, I wish to state that I will be addressing your questions only in terms of what is permissible under state law with regard to pick up plans. I emphasize that federal law controls the actual qualification and implementation of pick up plans. See 26 U.S.C. §414(h)(2). There are numerous complex requirements which a plan must meet before receiving favorable tax treatment under federal law. It is imperative that an employer contact the Internal Revenue Service for guidance in meeting these requirements. All pick up plans must be qualified with the IRS before they are implemented in order to insure favorable tax treatment is not jeopardized. In addition, PERS should be contacted for assistance in formulating a plan, and in order to insure that any administrative requirements the System may have are met.

R.C. 145.47 reads in pertinent part:

> Each public employee who is a member of the public employees retirement system and who is a township constable, police officer in a township police department or district, sheriff, or deputy sheriff shall contribute nine and one-half per cent of his earnable salary or compensation to the employees' savings fund, and every other public employee who is a member of the public employees retirement system shall contribute eight per cent of his earnable salary or compensation to the employees' savings fund except that the public employees retirement board may raise the contribution rate to a rate not greater than ten per cent of the employees' earnable salary or compensation. . . . (Emphasis added.)

It is my understanding that the State wishes to implement a "salary reduction" type of pick up plan, under which the State will assume and pay each employee's contribution to PERS and reduce each employee's salary by the amount of that contribution, so that there would be no increased cost to the State.

1982 Op. Att'y Gen. No. 82-071 summarized the reason for a public employer to pick up his employees' retirement contributions as follows:

> It is my understanding that the motivation for employers to "pick up" these contributions is found in federal tax law. Under 26 U.S.C. §414(h)(2), when a governmental employer, see 26 U.S.C. §414(d), picks up employee contributions to a pension plan qualified under 26 U.S.C. §§401(a) and 501(a) (as PERS is), such contributions are treated as employer contributions, even though they may be designated under state law as employee contributions. See 1979 Op. Att'y Gen. No. 79-001; 1978 Op. Att'y Gen. No. 78-049. Accordingly, the contributions are excludable from the employee's wages for purpose of income tax withholding, 26 U.S.C. §3401(a)(12)(A), and from the employee's gross income until such funds are distributed to the employee, 26 U.S.C. §402. See Rev. Rul. 36, 1981-1 C.B. 255; Rev. Rul. 35, 1981-1 C.B. 255; Rev. Rul. 462, 1977-2 C.B. 358.

Id. at 2-200 to 2-201.

It has been held that even though a state statute may require a public employee to contribute a portion of his compensation to a retirement fund, such contribution may be paid, instead, by the public employer in order for the employee to realize a tax savings. See Op. No. 82-071 (neither R.C. 145.47 nor R.C. 145.71-.73 restricts an employer's authority to pick up PERS payments for the benefit of employees). See also University of North Dakota v. United States, 603 F.2d 702 (8th Cir. 1979); Joint School District No. 1 v. United States, 577 F.2d 1089 (7th Cir. 1978).

Previous opinions of this office have concluded that various public appointing authorities have the authority to assume and pay their employees' retirement contributions. See Op. No. 82-071 (county appointing authorities, townships, regional planning commissions, general health districts and public libraries may pick up employees' contributions to PERS); 1979 Op. Att'y Gen. No. 79-001 (school board may pick up employees' contributions to School Employees Retirement System); 1978 Op. Att'y Gen. No. 78-049 (school board may assume and pay employees' contributions to State Teachers Retirement System). The ability of these public employers to pay employees' contributions was found in their authority to provide employees fringe benefits as a form of compensation. See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976). State appointing authorities, however, until this time have had no power to provide fringe benefits to their employees, because the compensation of state employees has been regulated exclusively by statute.[1] See 1983 Op. Att'y Gen. No. 83-042; 1981 Op. Att'y Gen. No. 81-056; 1977 Op. Att'y Gen. No. 77-090. The General Assembly alone had the power to grant fringe benefits to state employees. Id.

Opinions No. 78-049, No. 79-001, and No. 82-071 which characterized pick ups as fringe benefits did not distinguish between the "salary reduction" method of pick up plan, which is the type described above, and the "pick up in lieu of salary

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[1] This contention will no longer be valid once collective bargaining agreements are reached under the authority of Am. Sub. S.B. 133, 115th Gen. A. (1983) (eff. Oct. 6, 1983, April 1, 1984). Under the provisions of Am. Sub. S.B. 133, matters pertaining to wages, hours, terms and other conditions of employment are subject to collective bargaining. Pursuant to R.C. 4117.10, as enacted by Am. Sub. S.B. 133, laws pertaining to the retirement of public employees prevail over conflicting provisions of collective bargaining agreements. Although no court or the State Employment Relations Board has had an occasion to consider the question, it would appear that the matter of pick ups relates more to employee compensation than to the retirement of employees. When no collective bargaining agreement exists or when an agreement is silent as to a particular matter, state law prevails. R.C. 4117.10.

increase" method. This latter method entails an employer paying retirement contributions in addition to the salaries employees are currently receiving and clearly constitutes a fringe benefit to employees and an added expense for the employer. Under the "salary reduction" method, however, although the employer assumes and pays his employees' contributions, no additional expense is incurred by the employer, and employees receive no additional compensation from the public employer. Any benefit to employees is derived merely as a result of the favorable tax treatment accorded the employees' compensation by the federal government. This type of benefit is readily distinguishable from the types of fringe benefits generally afforded employees. See 1982 Op. Att'y Gen. No. 82-006 at 2-16 to 2-17 ("a fringe benefit is commonly understood to mean something that is provided at the expense of the employer and is intended to directly benefit the employee so as to induce him to continue his current employment"); Op. No. 77-090 (a state agency may not provide free parking to employees as a fringe benefit but may provide free parking where the acquisition and operation of a parking facility do not entail an additional direct monetary cost to the State). See also 1981 Op. Att'y Gen. No. 81-082 (concerning the provision of insurance to county welfare employees when the provision of such benefit imposes no additional cost upon the county). In sum, a pick up under a "salary reduction" plan unlike a payment under a "pick up in lieu of salary increase" plan, is not a fringe benefit because it does not involve an expense to the employer in addition to the salary an employee would otherwise receive, but goes merely to the method by which an employer accounts for an employee's compensation. See 1982 Op. Att'y Gen. No. 82-097. The amount of compensation paid by an employer and received by an employee remains the same.[2]

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[2] Although the terms "salary reduction" plan and "pick up in lieu of salary increase" plan are terms commonly used to refer to the two types of pick up plans, and are descriptive of an employee's salary for purposes of tax liability, these terms are misnomers for purposes of state law (other than that relating to taxation). Although the pick up plan described in your request is called a "salary reduction" plan, there is in actuality no reduction in remuneration, except for purposes of computing tax liability. The amount of money expended by the State on behalf of an employee under such a plan would remain unchanged. Indeed, the net result to an employee is an increase in money received due to the tax savings realized. As discussed above, a pick up under a "salary reduction" plan merely changes the method by which the State accounts for employees' compensation rather than the amount employees are paid. The payroll records maintained by the Department of Administrative Services, as well as the earnings statements distributed to employees would continue to show the same rate of pay employees were earning pursuant to R.C. 124.15 prior to the implementation of the pick up plan. The pick up would be reflected in the reduced amounts of federal and state taxes withheld (and later in reduced gross income shown on an employee's W2 form) and would be shown as a type of deferred compensation. In addition, the amount picked up by an employer under a "salary reduction" plan may be included in computing final average salary, see R.C. 145.01(K), 1982 Op. Att'y Gen. No. 82-097, although there are certain constraints under federal law on including pick ups in final average salary. See 26 U.S.C. §415; Rev. Rul. 481, 1975-2 C.B. 188; Rev. Ruling 13, 1959-1 C.B. 83. Thus, the implementation of a "salary reduction" plan, does not result in a reduction in salary for purposes of R.C. 124.34, which states that classified employees shall not be reduced in pay except under limited circumstances, generally involving misconduct.

I note that although an employee's contribution to PERS is assumed and paid by his employer under a pick up plan, such contribution must be paid into the employees' savings fund, pursuant to R.C. 145.23(A). If an employee ceases to be a public employee for any reason other than death or retirement, he is still entitled to payment of his accumulated contributions in the employees' savings fund, including those paid by his employer, pursuant to R.C. 145.23 and R.C. 145.40. That portion of his accumulated contributions paid by his employer will, however, be subject to taxation upon distribution to the employee. See 26 U.S.C. §402.

I turn now to your question whether an individual appointing authority has the power to implement a pick up under a "salary reduction" plan on behalf of his employees.

R. C. Chapter 121 sets forth the various state administrative departments and agencies and provides for the appointment of the directors, or administrative heads of such departments and agencies. R.C. 121.14 states that each department may employ necessary employees. R.C. 121.07 reads in part: "The director of each department 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." In addition to the authority found in R.C. 121.07 and R.C. 121.14, the directors of state departments are often given authority in their own enabling statutes to hire employees and to govern their departments and employees. See, e.g., R.C. 5101.02, R.C. 5101.05, and R.C. 5101.07 (Department of Public Welfare); R.C. 5119.01 and R.C. 5119.02 (Department of Mental Health); R.C. 5120.01 and R.C. 5120.05 (Department of Rehabilitation and Correction); R.C. 5123.03 and R.C. 5123.04 (Department of Mental Retardation and Developmental Disabilities); R.C. 5501.02 and R.C. 5501.04 (Department of Transportation).

In reliance on R.C. 121.07, as well as upon R.C. 5501.02, which states that, "[a]ll 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," I concluded in 1983 Op. Att'y Gen. No. 83-029 that the Director of Transportation may, if he finds it necessary for the efficient operation of the Department, establish a procedure for reimbursing Department employees for the cost of their personal equipment lost during the course of employment. In reaching this conclusion, I noted that the directors of administrative departments have broad authority to govern and regulate the operations of their departments and to establish policies with regard to department employees. See 1979 Op. Att'y Gen. No. 79-054 (the Director of the Department of Mental Health and Mental Retardation (now Mental Health) has broad discretion in relation to employee matters).

I believe that the broad authority granted to department directors by R.C. 121.07 as well as by their own enabling statutes, to control and govern their departments and specifically, their employees, empowers each director to implement a pick up program on behalf of his employees. The institution of a pick up plan, which results in substantial tax savings to employees, while imposing no additional cost upon the State, appears to be a reasonable and prudent exercise of administrative discretion. See Op. No. 81-082 at 2-323 ("it would be reasonable for an employer to grant any of his employees any benefit which imposes no additional cost upon the employer"); Op. No. 77-090 (free employee parking may be appropriate where there is no additional direct monetary cost to the state).

In addition, the implementation of a pick up plan comports with the language of R.C. 145.47, which provides for employee contributions to PERS and states in part:

> The head of each state department, institution, board, and commission, and the fiscal officer of each local authority subject to Chapter 145. of the Revised Code, shall deduct from the compensation of each member [of PERS] on every payroll of such member for each payroll period subsequent to the date such employee became a member, an amount equal to the applicable per cent of such member's earnable salary or compensation. The head of each state department and the fiscal officer of each local authority subject to Chapter 145. of the Revised Code, shall transmit promptly to the secretary of the public employees retirement board a report of member deductions at such intervals and in such form as the board shall require, showing thereon all deductions for the public employees retirement system made from all the earnings, salary, or

> compensation of each member together with warrants or checks covering the total of such deductions. (Emphasis added.)

By reducing the amount of an employee's salary by the amount of his PERS contribution while assuming the payment of such contribution, an appointing authority has fully complied with R.C. 145.47, albeit in a manner different than that customarily used. See State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915) (if a public officer is required to perform a duty, and there is no statutory direction as to the manner in which the duty is to be performed, the officer has the implied authority, in the exercise of his discretion, to determine the manner of performing his responsibility). As noted above, the implementation of a pick up plan is a reasonable manner with which to comply with R.C. 145.47.

The above discussion relates to the directors of state departments named in R.C. Chapter 121 to whom R.C. 121.07 specifically applies. There are numerous state boards, commissions, and agencies which fall without the scope of R.C. Chapter 121 and which are not specifically empowered to govern the agency or the conduct of its employees. Indeed, the elected state officers are given no such specific power, either by the Constitution or the General Assembly. However, once the power to employ is found,[3] the power to establish policies with regard to and otherwise deal with employees must be implied. Otherwise, the authority to employ would be rendered meaningless. See State ex rel. Hunt v. Hildebrant; 1981 Op. Att'y Gen. No. 81-026 at 2-97 ("the rule with regard to implied powers is that where an officer or board of officers is directed by statute to do a particular thing, in the absence of specific directions detailing the manner and method of performance, the command carries with it such additional, implied power as may be necessary for the due and efficient performance of the duty imposed" (citations omitted)). See also Ebert v. Stark County Board of Mental Retardation (implying the power to compensate employees from the power to employ). Thus, any state officer, administrative head of a state department or agency, and any board, or commission with the power, express or implied, to employ has the authority to assume and pay employees' contributions to PERS under a "salary reduction" plan.

I turn now to your second question, whether an elected state officer may participate in a "salary reduction" pick up plan. R.C. 141.01 sets forth the salaries of each of the elected state officers. R.C. 141.13 states that "[n]o fees in addition to the salaries and compensation named in [R.C. 141.01-.12], shall be allowed to any such officer,' and that, "[t]he salaries provided in such sections shall be in full compensation for any services rendered by such officers and employees, payment of which is made from the state treasury." (State officers are entitled to various insurance benefits, however, see R.C. 124.81, R.C. 124.82). Ohio Const. art. III, §19 prohibits the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, and the Attorney General from receiving in-term changes in compensation, and Ohio Const. art. II, §20 prohibits other public officers from receiving in-term changes in compensation. Article IV, §6 prohibits the in-term decrease in judges' compensation. As discussed above, however, pick ups of PERS contributions under a "salary reduction" plan are not fringe benefits and involve no direct increase in compensation as that compensation is paid from the state treasury, nor, as explained in footnote 2, does a pick up under a "salary reduction" plan involve a decrease in compensation. A pick up is merely a different method of paying the salary of an officer or an employee. I can see no reason why an elected

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[3] The power to employ may itself be implied. A public officer or board or commission, to whom specific duties are granted must be found to have those implied powers necessary to the execution of those duties. See State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915); 1981 Op. Att'y Gen. No. 81-026. If the employment of persons is necessary in order for an officer or board to perform statutory duties, then the power to employ will be implied. See Schultz v. Erie County Metropolitan Park District Board, 26 Ohio Misc. 68, 269 N.E.2d 72 (C.P. Erie County 1971); Op. No. 81-026 (authority to enter into contracts for personal services may be implied from the fact that the General Assembly appropriated funds for that purpose).

state officer may not participate in a "salary reduction" pick up plan. No provision of law prohibits this method of paying an elected officer's salary.[4]

I turn now to your third question, as to what agency may implement a "salary reduction" pick up plan for officers and employees of units of local government. As discussed above, the authority to implement such a plan is derived from the power to govern and control a department and its employees, which in turn may be implied from the power to employ. Thus, any local authority with the power to employ may implement a "salary reduction" pick up plan. Again, I see no reason why an officer may not participate in such a pick up plan. See footnote 4, supra.

Your fourth question asks to what extent the answers to questions one through three are affected by the fact that a proposed plan calls for the payment of the employees' contributions by the employer, representing a cost over and above the employees' salaries. As discussed above, this type of pick up plan, the "pick up in lieu of salary increase" method, involves an employer picking up contributions in addition to the salaries employees are currently receiving, and constitutes a fringe benefit to employees. See Op. No. 82-071; Op. No. 79-001; Op. No. 78-049. The authority to implement such a pick up plan is based on the authority of an officer or agency to compensate employees. Id. Unless implemented pursuant to a collective bargaining agreement (see footnote 1, supra), a state appointing authority has no power to grant its employees fringe benefits. Such benefits must be granted by the General Assembly. See Op. No. 83-042; Op. No. 81-056; Op. No. 77-090. Thus, a state officer, state administrative head, board, or commission may not implement a "pick up in lieu of salary increase" plan unless such a benefit is part of a collective bargaining agreement.

The compensation of state elected officers is set by statute. See R.C. 141.01. See also R.C. 124.81; R.C. 124.82. These officers are not entitled to fringe benefits other than those provided by statute. See R.C. 141.13; Op. No. 83-042; 1983 Op. Att'y Gen. No. 83-004. In addition, state elected officers are prohibited by Ohio Const. art. III, §19 from receiving an in-term increase in compensation. Those public officers, who are not otherwise provided for in the Constitution, are prohibited by Ohio Const. art. II, §20 from receiving an in-term increase in compensation. Because fringe benefits are components of compensation, an officer may not receive additional fringe benefits after the commencement of his term. See State ex rel. Parsons v. Ferguson. You have drawn my attention to Ohio Const. art. IV, §6, which pertains to the compensation of judges. Article IV, §6 provides that judges shall receive compensation as provided by law, but shall not receive any fees or perquisites. Thus, judges are prohibited by art. IV, §6 from receiving fringe benefits not provided by law. See Op. No. 83-042. See also 1982 Op. Att'y Gen. No. 82-022. In addition, R.C. 141.13 prohibits judges from receiving any compensation in addition to that specified in R.C. Chapter 141. Thus, judges, as well as other elected officials may not participate in a "pick up in lieu of salary increase" plan. I note that elected officers fall without the scope of the recent collective bargaining legislation, see R.C. 4117.01(C)(1), and thus may not participate in a "pick up in lieu of salary increase" plan implemented pursuant to a collective bargaining agreement.

With regard to the employees of local units of government, I draw your attention to Op. No. 82-071, as well as Op. No. 79-001 and Op. No. 78-049. From these opinions, it is apparent that any local appointing authority with the power to compensate its employees may, as a fringe benefit, pick up its employees' retirement contributions. I note that those officers whose compensation is set by statute are not entitled to fringe benefits not provided by statute, and thus may not participate in a pick up plan. See Op. No. 83-042. In addition, those officers who are subject to Ohio Const. art. II, §20 or a similar provision adopted by a

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[4] Although state law does not prohibit a state officer from participating in a "salary reduction" plan, it is my understanding that it may be necessary under federal requirements for elected officers to be placed in a separate class from other employees. The IRS should be contacted for further details.

municipality, see, e.g. R.C. 731.07, which prohibits in-term increases in compensation, are not entitled to participate in a pick up program if such benefit is instituted after the beginning of the officer's term.

Your final question is, "[i] f an officer or employee is paid in part by a unit of local government and in part by the state government, may they treat the different portions of this compensation differently for P.E.R.S. purposes. . .or must their treatment be uniform." An example of an officer who is paid by two governmental units is a common pleas court judge who is paid in part by the state and in part by the county which he serves. R.C. 141.04; R.C. 141.05. I am aware of no provision of law which would require one unit of government to pick up an officer's or employee's retirement contribution merely because another governmental unit which pays part of the officer's or employees' compensation does so. The obligations of each governmental unit are separate and distinct from those of other governmental authorities. See generally 1946 Op. Att'y Gen. No. 850, p. 240. The agreements of one cannot be seen to bind other governmental units not parties to such agreements. Thus, a judge who wished to have his contributions to PERS picked up as part of both his state and county compensation would have to implement two pick up plans.

As a final matter, I emphasize again that because the Internal Revenue Code governs the tax status of pick up plans, an employer should qualify such plans with the Internal Revenue Service before implementing such plans in order to assure such plans will receive favorable tax treatment. In addition, an employer should contact PERS prior to the implementation of a plan, in order to comply with any administrative guidelines PERS may have.

In conclusion, it is my opinion, and you are advised, that:

1. Any state officer, administrative head of a state department or agency, and any state board or commission with the power, express or implied, to employ has the authority under state law to assume and pay employees' contributions to the Public Employees Retirement System under a "salary reduction" plan. Any such plan must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

2. An elected state officer may under state law participate in a "salary reduction" pick up plan. Any such plan must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

3. Any local governmental authority with the power to employ may under state law implement a "salary reduction" pick up plan for employees and for the appointing authority itself. Any such plan must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

4. A state officer, administrative head of a department or agency, state board or commission may not implement a "pick up in lieu of salary increase" plan for employees unless such pick up is part of a collective bargaining agreement. Any plan adopted as part of a collective bargaining agreement must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

5. State elected officers are not authorized to participate in a "pick up in lieu of salary increase" plan.

6. Any local government authority with the power to comensate its employees may under state law implement a "pick up in lieu of salary increase" plan for its employees, although those officers whose compensation is set by statute may not participate in the

plan, and those officers who are subject to either Ohio Const. art. II, §20 or a similar local provision are not entitled to participate in the plan if such plan was instituted after the commencement of the officer's term. Any such plan must be qualified with the Internal Revenue Service prior to implementation to insure favorable tax treatment is received.

7. If an officer or employee is paid in part by the state and in part by a unit of local government, and if one of the employing authorities picks up the officer's or employee's retirement contribution, the other employing authority is not required to pick up the retirement contribution.