642.

THE OHIO STATE UNIVERSITY—PAYROLL DEDUCTIONS:

1. AUDITOR OF STATE OR UNIVERSITY OFFICERS; NO AUTHORITY TO DEDUCT FROM AGRICULTURAL EXTENSION SERVICE EMPLOYEES' SALARIES FOR FEDERAL RETIREMENT PURPOSES.

2. AUDITOR OF STATE MAY DEDUCT INSURANCE PREMIUMS FROM SALARIES OF AGRICULTURAL EXTENSION SERVICE EMPLOYEES UNDER §3917.64 RC.

SYLLABUS:

1. There is no authority under the laws of this state whereby the officers of the Ohio State University or the auditor of state, may deduct six and one-half per cent from the base salary of each Agricultural Extension Service employee of the university for federal retirement purposes, and remit such deduction to the United States Treasury.

2. Pursuant to Section 3917.04, Revised Code, the vice president and business manager of the Ohio State University may arrange for the audtior of state to deduct insurance premiums from the salaries of Agricultural Extension Service employees who request such action, and to remit the sums so deducted to the Federal Employees Group Life Insurance Fund.

Columbus, Ohio, June 19, 1957

Hon. Novice G. Fawcett, President
The Ohio State University
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On March 14, 1955 the Board of Trustees of The Ohio State University authorized the President to sign a memorandum of understanding between The Ohio State University and The United States Department of Agriculture on cooperative extension work in agriculture and home economics. This abrogates the agreement signed July 22, 1914.

"It is to be noted that in this memorandum of understanding the statement is made 'that all State and county personnel appointed by the Department as cooperative agents for extension work in agriculture and home economics in the State of Ohio shall be joint representatives of the College of Agriculture of The Ohio State University and The United States Department of Agriculture, unless otherwise expressly provided in the project agreement.'

"Employee appointments are made by the Board of Trustees on recommendation of the Director of Agricultural Extension Service, Dean of the College of Agriculture and the President. In general, since the passage of the Smith-Lever Act in 1914, employees of the Extension Service have also received cooperative appointments by the U. S. Department of Agriculture.

"On the fasis of the fact that employees of the Agricultural Extension Service have received cooperative appointments certain interpretations have been made by the U. S. Department of Agriculture that these employees are:

"1. Eligible to use the franking privilege in handling their U. S. Mail in carrying on their official business.

"2. Eligible to participate in the Federal Group Life Insurance program under the provisions of the Federal Employees

Group Life Insurance Act of 1954. A memorandum of agreement has been signed by The Ohio State University and the Federal Extension Service of the U. S. Department of Agriculture making the plan effective January 1, 1956. Payments are being made by payroll deduction on an optional basis.

"3. Eligible to participate in the Federal Civil Service Retirement System. Many members of the Agricultural Extension Service staff have applied for and have been in the Federal Retirement System since June, 1946 and subsequent dates. This was the date when Extension workers first became eligible. Payments for Federal Retirement have been made by personal check from employees paid direct to the Federal Extension Service of the U. S. Department of Agriculture.

"On July 1, 1956 the Federal Civil Service Retirement Act of May 29, 1930 was amended by the 84th Congress by the enactment of Public Law 854.

"Certain interpretations have been made concerning the status of cooperative employees under the amended retirement act which would change the procedure of cooperative employees in making payments into the Federal Retirement System.

"These changes involve:

"1. A request that as soon as possible payments by Extension employees be made by payroll deduction.

"2. The requirement that 'From and after the first day of the first pay period which begins after June 30, 1957, an equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary, pay or compensation, or in the case of an elected official, from such appropriation or fund as may be available for payment of other salaries of the same office or establishment. The amounts so deducted and withheld by each department or agency, together with the amounts so contributed, shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be deposited by the department or agency in the Treasury of the United States to the credit of the fund.'

"The Dean of the College of Agriculture has requested that I present to the Board of Trustees, for approval, a request that six and one-half per cent be deducted from the basic salary of each Extension employee who signs an acceptance, and that the total deduction be remitted to the Treasury of the United States and credited to the Civil Service Retirement and Disability Fund.

"We are also advised by the Dean's office that it is probable that the present congress will provide federal funds in sufficient amount to pay the employer's share of Federal Retirement payments for cooperative Extension employees. At any rate it will have to come out of the next and subsequent federal appropriations for the Agricultural Extension Service, beginning with July 1, 1957.

"Since entering into this memorandum of agreement with the U. S. Department of Agriculture, first in 1914 and amended in 1955, the University has accepted funds from the Department for use in various extension programs. Such funds have been deposited in the State Treasury to the credit of the proper Extension Rotaries authorized in the appropriation acts of successive legislatures. Funds are also received from Ohio counties for the support of county agent work and deposited in the rotary provided. Funds are also appropriated by the State Legislature in support of the extension program.

"Payments are made to employees of the Agricultural Extension Service by voucher prepared by the University Business Office, signed by the Comptroller, approved by the Finance Department for availability of funds, and warrant is written by the Auditor of State.

"It is my intention that the employees of the Extension Service should have all advantages afforded by Federal and State regulations and before I make such recommendation to the Board of Trustees your opinion is requested on the following:

'1. Under the State law, does the Vice President and Business Manager of the University have the authority to deduct six and one-half per cent from the base salary of each Extension employee for Federal retirement, and remit such deduction to the U. S. Treasury? (Section 3917.04 Revised Code).

'2. Under the State law, does the Vice President and Business Manager of the University have the authority to deduct insurance premiums from the salaries of Extension employees and remit to the Federal Employees Group Life Insurance Fund?

'3. If such deductions are permitted under the State law, what funds may be legally used for the employer's matching contribution to the Retirement Fund?'

As to the precise question you raise, I believe a point of clarification should be made. In your inquiry you ask whether there exists any authority whereby the vice president and business manager of the university

may make certain deductions from the salaries of agricultural extension employees. More accurately the question should be whether the auditor of state has such authority. The vice president and business manager acts in a ministerial capacity in making up the payroll disbursements journal and his authority to make the deductions herein contemplated is dependent upon such authority existing in the auditor.

In answering your first question, consideration must be given to the well established principle of law that public officers have only such power and authority as are clearly conferred by law or necessarily implied from the powers granted. 67 Corpus Juris Secundum, Officers, 366, Section 102. This principle was followed by my predecessor in Opinion No. 2592, Opinions of the Attorney General for 1948, page 12, wherein it was held that the auditor of state is under no legal duty to make any deductions from the salaries of state employees for purposes of the Columbus city income tax.

I have examined the state statutes and have been unable to find any authority permitting the deduction herein contemplated. Further I have examined Public Law 854, titled Federal Executive Pay Act of 1956, which embraces amendments to the Civil Service Retirement Act of May 29, 1930, and have been unable to find any provisions covering the situation here presented.

Section 4 (a) of Public Law 854 provides in part as follows:

> "From and after the first day of the first pay period which begins on or after the effective date of the Civil Service Retirement Act Amendments of 1956, there shall be deducted and withheld from each employee's basic salary and amount equal to 6½ per centum of such basic salary * * *. From and after the first day of the first pay period which begins after June 30, 1957, an equal sum shall also be contributed *from the respective appropriation or fund which is used for payment of his salary, pay or compensation* * * *. *The amounts so deducted and withheld by each department or agency,* together with the amounts so contributed shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be deposited *by the department or agency* in the Treasury of the United States to the credit of the fund. * * *" (Emphasis added.)

The statute clearly indicates that deductions are to be made from salaries paid directly by the federal government through its various departments and agencies, and it is only these departments and agencies

which are charged with the duty of making such deductions. Nothing in the statute purports to place such a duty upon state agencies. Further since the salaries of the employees in question are paid by the State of Ohio and not by the federal government, I cannot see how this statute can be thought to apply.

It is true that the salaries of some extension employees are paid from a fund which originally was federal money granted to the state pursuant to the Smith-Lever Act, Title 7, Section 341-348, U.S. Code, but this money once having been appropriated to the state loses its federal character and becomes state funds. A similar determination was made by my predecessor in Opinion No. 1455, Opinions of the Attorney General for 1952, page 370, it being his opinion that a grant of federal money to the state for use in the construction of armories becomes state funds and can be disbursed only as provided by state law.

The 99th General Assembly, in Amended House Bill No. 672, Section 8, included therein the following provision:

> "All revenues received from the federal government by the State of Ohio, or any of its departments or divisions, and any receipts or any collections made for and on behalf of the United States government are hereby appropriated for the purpose for which allotted or collected."

It was from this reasoned by my predecessor that the General Assembly included this provision only because it realized that the funds received as federal grants in aid became state funds and therefore had to be appropriated by that body. As to the federal funds received by this state pursuant to the Smith-Lever Act, the 101st General Assembly has likewise seen fit to include a somewhat similar provision in Amended House Bill No. 929 which reads in part as follows:

> "All monies received into the state treasury between July 1, 1955 and June 30, 1957, both inclusive, from the United States Government for purposes pertaining to agricultural extension * * * are hereby appropriated to the Ohio State University, Agricultural Extension, for the respective uses and purposes for which the same shall have been appropriated by the United States Government."

The 101st General Assembly, as did the 99th General Assembly, thus recognized that such federal funds became state funds which must be appropriated by that body.

Since this money becomes state funds, Section 4 (a) of Public Law 854 is inapplicable, as that Act governs funds held by federal departments and agencies only, and paid out by them in the form of wages and salaries. Unless state law exists which encompasses the provisions of Section 4 (a), deductions cannot be made from these state funds.

Amended House Bill No. 929 above cited appears to be the only state law which might possibly encompass the provisions of Section 4 (a).

It is there provided that monies received from the federal government are to be used for the purposes for which appropriated by the Government. These purposes are set forth in the Smith-Lever Act, Title 7, Sections 341-342, U.S. Code, which read as follows:

> Section 341: "In order to aid in diffusing among the people of the United States useful and practical information on subjects relating to agricultural and home economics, and to encourage the application of the same, there may be continued or inaugurated in connection with the college or colleges in each state, territory, or possession, now receiving, or which may hereafter receive the benefits of sections 301-305, 307, 308, 321-326 and 328 of this title, agricultural extension work which shall be carried on in co-operation with the United States Department of Agriculture: * * *"
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> Section 342: "Cooperative agricultural extension work shall consist of the giving of instruction and practical demonstrations in agriculture and home economics and subjects relating thereto to persons not attending or resident in said colleges in the several communities, and imparting information on said subjects through demonstrations, publications, and otherwise and for the necessary printing and distribution of information in connection with the foregoing; and this work shall be carried on in such manner as may be mutually agreed upon by the Secretary of Agriculture and the State Agricultural college or colleges receiving the benefits of Sections 341-343 and 344-348 of this title."

The question of participation in the Federal Retirement System by agricultural extension employees is nowhere considered as one of the purposes of the Act and the continued receiving of federal funds by the state is not contingent upon such employees being included therein.

In your query you suggest the possibility that the present Congress will provide sufficient funds to pay the employer's share of retirement payments for these employees. Here the question is not one of *sufficiency,* but rather is one of a grant of funds being made *subject to the condition*

that some part thereof be used for the purpose involved. If the Congress should do this, either in an act of appropriation or in a general law, there could be no doubt of the duty of the Ohio authorities to comply with such condition if the grant is accepted. I do not understand, however, that we are presently dealing with any such situation.

Since the General Assembly has appropriated the funds granted by the federal government for the purposes set forth in the existing federal law, and since this law does not include as one of its purposes the inclusion of extension employees in the Federal Retirement System, it is my opinion that Amended House Bill No. 929, 101st General Assembly does not encompass the provisions of Section 4 (a) Public Law 854 and therefore there exists no authority whereby either the vice president and business manager of the university or the state auditor may make deductions from the salaries of extension employees for purposes of federal retirement.

As you have stated in your inquiry, some agricultural extension employees have been making payments for federal retirement by personal check since 1946. It may well be that the federal authorities will permit the continuance of this practice regardless of the July 1, 1956, amendment to the Federal Civil Service Retirement Act, in view of the fact that there is no corresponding state authority to carry out the provisions of this amendment. However, since this is a matter for federal determination, I shall not comment further with respect thereto.

With regard to your second question, Section 3917.04, Revised Code, provides as follows:

> "If any employee of a political subdivision or district of this state, or of an institution supported in whole or in part by public funds, or any employee of this state, authorizes in writing the auditor or other proper officer of the political subdivision, district, institution, or the state, of which he is an employee to deduct from his salary or wages the premium or portion thereof agreed to be paid by him to an insurer authorized to do business in the state for life, endowment, accident, health, or health and accident insurance, annuities, or hospitalization insuring a group under the group plan, or salary savings plan, such political subdivision, district, institution, or the state of which he is an employee may deduct from his salary or wages such premium, or portion thereof, agreed to be paid by said employee, and pay same to the insurer. The auditor or other proper official of such political subdivision, district, institution, or the state of which he is an employee may issue warrants covering salary or wage deductions which have

been authorized by such employee in favor of the insurer and in the amount so authorized by the employee."

The only question here to be determined is whether the insurer under the Federal Employees Group Life Insurance Act is authorized to do business in the state as required by the provisions of this section. I have examined the records in the office of the superintendent of insurance and find that the insurer, The Metropolitan Group Life Insurance Company of New York, is so authorized; therefore, it appears that the above cited statute is adequate authority for these premium deductions.

The answer to your first question being dispositive of the third, I shall not consider it further.

Accordingly, it is my opinion and you are advised, that:

1. There is no authority under the laws of this state whereby the officers of the Ohio State University or the auditor of state, may deduct six and one-half per cent from the base salary of each Agricultural Extension Service employee of the university for federal retirement purposes, and remit such deduction to the United States Treasury.

2. Pursuant to Section 3917.04, Revised Code, the vice president and business manager of the Ohio State University may arrange for the auditor of state to deduct insurance premiums from the salaries of Agricultural Extension Service employees who request such action, and to remit the sums so deducted to the Federal Employees Group Life Insurance Fund.

Respectfully,
WILLIAM SAXBE
Attorney General