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A BOARD OF EDUCATION MAY MAKE DEDUCTIONS FROM THE SALARIES OF EMPLOYEES WHO AUTHORIZE IT IN WRITING TO PAY PREMIUMS TO AN INSURER OF AN ANNUITY CONTRACT—§3917.04 R.C., OPINION 38, OAG, 1959, OPINION 2778, OAG, 1940.

SYLLABUS:

Under Section 3917.04, Revised Code, a board of education may make deductions from the salaries and wages of employees who authorize the deductions in writing to pay premiums to an insurer on an annuity contract, and the section does not require that such annuity insurance be given to a group under the group plan, or salary savings plan, before such deductions may be made. Opinion No. 2778, Opinions of the Attorney General for 1940, page 878, and Opinion No. 38, Opinions of the Attorney General for 1959, page 10, overruled in part.

Columbus, Ohio, March 13, 1962

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion poses the question whether a board of education may make deductions from the salary of an employee, when authorized by the employee, for the purpose of distributing the amount deducted to an insurance company as a premium for a tax-sheltered annuity. The purpose of the procedure would be to allow the employee to take advantage of an income deferment under the federal income tax laws.

A board of education has only those powers expressly granted by statute or reasonably implied from those granted *(Board of Education* v. *Ferguson,* 68 Ohio App., 514). In the instant matter, Section 3917.04, Revised Code, appears to be pertinent to the issue. That section reads 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 the 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."

A school district is without a doubt a "political subdivision or district of this state." (Section 3313.17, Revised Code.) Thus, under Section 3917.04, *supra,* an employee of the board of education of a school district may authorize the deduction from his salary or wages of the premium or portion thereof agreed to be paid by him to an insurer au-

thorized to do business in the state for annuities, and the board of education may make such deduction and pay the same to the insurer.

The next question which arises is whether such deductions for annuity payments may be made only when the insurer is "insuring a group under the group plan, or salary savings plan."

In Opinion No. 38, Opinions of the Attorney General for 1959, page 10, the syllabus reads:

> "Section 3917.04, Revised Code, is authority for the auditor or the proper officer of a political subdivision, district, institution, or the State of Ohio, to make deductions from the salary of employees who authorize the deductions in writing to pay premiums to an insurer on an annuity contract only when such contract is issued under a group plan."

On page 12 of the opinion it is stated:

> "It therefore seems that the statute authorizes deductions to be made from salaries of employees for annuities so long as the annuities are purchased in accordance with a group plan. In the situation you present, it would be possible for the hospital to deduct amounts from the salaries of the physicians to purchase an annuity of this type. This statute does not authorize deductions to be made in order to pay premiums on individual annuity contracts."

Also, in Opinion No. 2778, Opinions of the Attorney General for 1940, page 878, the then attorney general interpreted the same language, then Section 9426-1a, General Code, to apply to the types of insurance enumerated only when insuring a group under the group plan or salary savings plan.

In spite of the conclusions reached in the 1940 and 1959 opinions, a careful reading of Section 3917.04, *supra,* discloses that the provision as to insuring a group under the group plan, or salary savings plan, appears to apply only to hospitalization insurance. The pertinent language reads:

> "* * * 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 * * *."

Under the generally accepted rules of grammar, if the intent had been to apply the words "insuring a group under the group plan, or

salary savings plan" to the several types of insurance mentioned in the section, then a comma would have been inserted after the word "hospitalization." Without such a comma, those words are applied only to the word "hospitalization."

In 50 Ohio Jurisprudence 2d, Section 191, page 170, it is stated:

> "It is presumed that the legislature, in phrasing a statute, knows the ordinary rules of grammar, and consequently, that the grammatical reading of a statute gives its correct sense. A fortiori, if the grammatical construction and the obvious meaning of the statute concur, that construction will be adhered to.
>
> "* * * * * * * * *"

It is true that in some cases a court may disregard the punctuation of a statute, but this is done only when necessary to give effect to what otherwise appears to be the purpose and true meaning of the statute. Also, it is stated in 50 Ohio Jurisprudence 2d, Section 192, page 172:

> "If what appears to have been the general purpose of the legislature is as well effectuated by reading the statute exactly as it has been caused to be printed as it would by changing it, even as to punctuation, there is no adequate reason for reading it otherwise."

I see no reason to presume an intent that Section 3917.04, *supra,* should be followed in all cases only where the insurer insures a group under the group plan, or salary savings plan. There is no other provision of the section which would imply that such was the intention, and no reason to read the section other than as written.

It might be argued that unless a group plan were followed the procedure could become cumbersome and confusing, since it would be possible that more than one insurance company would be involved. This argument is not persuasive, however, since the board of education has full power under the section to allow or not allow deductions, and the board can limit the participation of insurance companies as it sees fit.

In view of the foregoing, therefore, I am constrained to conclude that deductions for annuity payments may be made under said Section 3917.04 regardless of whether the insurance is given to a group under the group plan, or salary savings plan. Former Opinions No. 38 and

2778, *supra,* are thus overruled so far as they conflict with this conclusion.

As to whether any particular annuity deductions would qualify under the federal law here concerned, that is a question for the federal authorities and I express no opinion thereon.

To conclude, it is my opinion and you are advised that under Section 3917.04, Revised Code, a board of education may make deductions from the salaries and wages of employees who authorize the deductions in writing to pay premiums to an insurer on an annuity contract, and the section does not require that such annuity insurance be given to a group under the group plan, or salary savings plan, before such deductions may be made. Opinion No. 2778, Opinions of the Attorney General for 1940, page 878, and Opinion No. 38, Opinions of the Attorney General for 1959, page 10, overruled in part.

Respectfully,
MARK MCELROY
Attorney General