

**OPINION NO. 71-047****Syllabus:**

If individual employees of a school conducted by a county board of mental retardation have given authorization, the County Auditor may withhold the necessary portion of their salaries or wages in order to pay premiums to an authorized insurer under a tax-deferred annuity program, and a group plan is not required.

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**To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio**  
**By: William J. Brown, Attorney General, September 1, 1971**

Your request for my opinion asks whether the County Auditor has authority:

"\* \* \*to withhold a part of the income of teachers in the Larc Lane School, which is operated by the County Board of Mental Retardation. The sums so withheld shall be paid to an insurance company under a Tax Deferred Annuity Program, as

provided for in Section 403(B) of the 1954 Internal Revenue Code (as amended).

"This plan permits employees to authorize certain employers to withhold part of their income for a Deferred Annuity Program. The part withheld and paid to an insurance company is not subject to income tax until the person retires.

"We are writing to you to inquire if it is permissible for the County Auditor to enter into such a plan on behalf of school teachers employed by the County Board of Mental Retardation, and pay withheld wages to a selected insurance company."

The deduction of a portion of the salary or wages of public employees for insurance purposes is controlled by Section 3917.04, Revised Code, as amended in 1967. In pertinent part, it reads as follows:

"If an employee\* \* \*of an institution supported in whole or in part by public funds, \* \* \* authorizes in writing the auditor\* \* \* 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 insurance, or salary savings plan, such\* \* \*institution, \* \* \*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, provided that life, endowment, accident, health, health and accident, and hospitalization insurance is offered to the employee on a group basis and that at least ten per cent of the employees at [the] institution\* \* \*voluntarily elect to participate in such group insurance.

"The auditor\* \* \*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."

Your letter states that the Larc Lane School is operated by the Lucas County Board of Mental Retardation. Such county boards of mental retardation are created pursuant to Section 5126.01, Revised Code. Furthermore, Section 5126.03, Revised Code, provides, in pertinent part, that:

"The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation to perform its functions and duties as provided by this section."

There can be no doubt, therefore, that the teachers at the Larc Lane School are employees of "an institution supported in whole or in part by public funds", within the meaning of Section 3917.04, *supra*. It is also clear from the face of the same Section that the desired deductions for insurance premiums must be authorized by the teachers in writing, and that they must be paid to an insurer authorized to do business in the State of Ohio. See Opinion No. 2868 and Opinion No. 3462, Opinions of the Attorney General for 1962.

The only remaining question is whether the group basis provision, which was added to Section 3917.04, supra, by the 1967 amendment, applies to the tax-deferred annuity plan described in your letter, or whether such annuity contracts can be entered into by individual teachers.

The statute which first permitted deduction of insurance premiums from the salaries and wages of public employees was enacted in 1939 as a section of an act regulating group life insurance programs. 118 Ohio Laws, 531-532; Sections 9426-1 (2) (g) and 9426-1a, General Code. With some minor verbal changes, immaterial for present purposes, Section 9426-1a, supra, became Section 3917.04, supra, which in 1962 read, in pertinent part, as follows:

"If any employee\* \* \*of an institution supported in whole or in part by public funds, \* \* \*authorizes in writing the auditor\* \* \* 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\* \* \*in-stitution\* \* \*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\* \* \*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." (Emphasis added)

Comparison of the 1967 amendment of Section 3917.04, supra, with this 1962 version reveals that the word "insurance" has been substituted for the underlined language in the 1962 version, and that a provision has been added at the end of the first sentence to make it clear that all types of insurance covered are to be offered to the employees on a group basis, with the single exception of annuities.

At first blush, the language of the 1962 version, together with its collation as a part of the statutes regulating group life insurance, seem to indicate an intention of the General Assembly to permit the deduction of insurance premiums from the salaries or wages of public employees only in the case of group policies. However, in 1962 one of my predecessors, in answering a question very similar to yours, held that a group policy was unnecessary to authorize deductions for premiums on a tax-deferred annuity plan, and that, in fact, "the provision as to insuring a group under the group plan\* \* \*appears to apply only to hospitalization insurance." (Emphasis added.) Opinion No. 2868, supra, page 176. In the 1967 amendment the General Assembly seems to have, in large part, rejected this interpretation, and to have restored the requirement that a group plan is necessary to justify the deduction of premiums for most types of insurance covered by the statute. The added provision reads as follows:

"\* \* \*[P]rovided that life, endowment, accident, health, health and accident, and hos-

pitalization insurance is offered to the employees at [the] institution\* \* \*voluntarily elect to participate in such group insurance."

The omission of "annuities" from the amendment is, however, striking, and in this respect the General Assembly must have intended to accept my predecessor's view that a group plan was not necessary to justify deductions for annuity premiums. Such a significant statutory omission is presumed to have been intentional. 50 O. Jur. 2d 139.

In specific answer to your question, it is my opinion and you are so advised that if individual employees of a school conducted by a county board of mental retardation have given authorization, the County Auditor may withhold the necessary portion of their salaries or wages in order to pay premiums to an authorized insurer under a tax-deferred annuity program, and a group plan is not required.