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THE DEPARTMENT OF LIQUOR CONTROL CANNOT HOLD UP THE EARNED BUT UNDELIVERED CHECK OF A BONDED EMPLOYEE AGAINST WHICH ACTION HAS BEEN TAKEN FOR ALLEGED SHORTAGE OF FUNDS—OPINION 2576, OAG, 1958.

SYLLABUS:

Where the department of liquor control has taken action against an employee of a state liquor store for an alleged shortage of funds, and such employee is bonded pursuant to Section 4301.08, Revised Code, the department may not hold earned but undelivered checks of the employee as an off-set on the liability of the bonding company.

Columbus, Ohio, April 12, 1962

Mr. George Dick, Director
Department of Liquor Control
33 N. Third Street, Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“There has been a recent occurrence in one of the stores of the state liquor store system wherein an audit by the Bureau of Inspection and Supervision of Public Offices has disclosed a shortage in the funds of that store.

“As you are aware the Department of Liquor Control holds the manager of each store responsible for any shortages which occur in his store in excess of the allowances set forth in Section

4301.16, Revised Code, and that each of such employees of the Department of Liquor Control are covered by a blanket bond as provided in Section 4301.08, Revised Code.

“In recent efforts made to collect on such bonds, this department has experienced an attitude on the part of the bonding company whereby the bonding company feels that the limits of its coverage should be off-set by the amount of earned but uncollected salary of the employee covered by the bond.

“It is therefore respectfully requested that you furnish me with an Attorney General’s opinion as to whether or not the Department of Liquor Control may legally hold earned but undelivered pay checks of store managers or other employees against whom the department has been compelled to take action to collect the amount of the bond which covers him as such manager or employee, and to apply such pay checks as an off-set against the indebtedness of the bonding company.”

Your question is governed by an established principle of law as set forth in 44 Ohio Jurisprudence 2d., “Public Officers”, Section 60, page 546 reading:

“* * * As a general rule, therefore, and apart from the powers which are delegated to a public officer by the Constitution or a municipal charter, public officers have only such powers as are expressly delegated to them by statute, and such as are necessarily implied from those so delegated. * * *”

In Opinion No. 835, Opinions of the Attorney General for 1946, page 234, and Opinion No. 2592, Opinions of the Attorney General for 1948, page 12, a predecessor ruled that the auditor of state had no legal *duty* to make deductions from the salaries of state employees for the payment of city income taxes.

More specifically, in Opinion No. 2576, Opinions of the Attorney General for 1958, page 513, my predecessor ruled:

“1. The auditor of state may make deductions from the salary of a state employee *only* where such action is specifically authorized by statute.”

His reasoning stemmed from certain sections of the Code which specifically authorizes the auditor of state to make a deduction from the salary of a state employee; for example, Section 3917.04 specifically authorizes the auditor of state to deduct certain insurance premiums from the salaries of employees who request the deduction. The existence of statutes

that authorize some deductions in specified circumstances are in themselves authority for ruling that in the absence of a statute there is no authority for a public officer to make deductions from the salary of a state employee.

I note that under Section 4301.08, Revised Code, the director of liquor control may require a bond of any employee of the department. As to holding earned pay checks to protect the bonding company, however, I have searched the Revised Code and am unaware of any section of law authorizing the kind of relief you seek. I thus answer your specific question in the negative.

Accordingly, it is my opinion and you are advised that where the department of liquor control has taken action against an employee of a state liquor store for an alleged shortage of funds, and such employee is bonded pursuant to Section 4301.08, Revised Code, the department may not hold earned but undelivered checks of the employee as an off-set on the liability of the bonding company.

Respectfully,

MARK McELROY

Attorney General