

**Note from the Attorney General's Office:**

1978 Op. Att'y Gen. No. 78-049 was modified by  
1978 Op. Att'y Gen. No. 78-065.

**OPINION NO. 78-049****Syllabus:**

An employer is permitted to "pick up" part or all of the teacher contributions required to be made to the State Teachers Retirement System pursuant to R.C. 3307.51.

---

**To: James L. Sublett, Executive Director, State Teachers Retirement System, Columbus, Ohio**  
**By: William J. Brown, Attorney General, August 25, 1978**

I have before me your request for my opinion on the following question:

May an employer "pick up" part or all of the teacher contributions to the State Teachers Retirement System?

Your request follows the announcement of Rev. Rul. 77-462. In that ruling, the Internal Revenue Service declared that when an employer-school district "picks up" (assumes and pays) required teacher contributions to a pension plan, qualified under §§401(a) and 501(a), Internal Revenue Code of 1954, that payment would not be included as income to the employee until distribution of the benefits upon retirement or termination, pursuant to §402(a). But while Rev. Rul. 77-462 identifies the federal tax consequences of such a payment, it does not address the question of whether such a payment is authorized under Ohio law.

Teacher contributions to the State Teachers Retirement System (STRS) are required by R.C. 3307.51, which states in relevant part:

Each teacher who is a member of the state teachers retirement system shall contribute eight percent of his earned compensation to the teachers savings fund....  
Such contribution shall be deducted by the employer in an amount equal to the applicable percent of such contributor's paid compensation... [Emphasis added.]

Thus, the question of whether an employer may "pick up" employee contributions to STRS depends upon the meaning of the phrase ". . . shall contribute eight percent of his earned compensation . . ."

Teachers, professors and others eligible to participate in STRS, by statute, have their rate of compensation fixed by their boards of education or trustees. See, e.g., R.C. 3317.14 (empowers boards of education to fix compensation, subject to prescribed minimum rates, for their teaching employees); and R.C. 3335.09 (permits board of trustees of Ohio State University to determine compensation of faculty members). Compensation is not limited to direct cash payments to an employee. As the Supreme Court noted in State, ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 391, while discussing Ohio Const., Art. II, §20,:

Fringe benefits . . . are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check. It is obvious that an office holder is benefitted and enriched by having his insurance bill paid out of public funds, just as he would be if the payment were made directly to him, and then transmitted to the insurance company. Such payments for fringe benefits may not constitute "salary" in the strictest sense of the word, but they are compensation.

Thus, it is of no moment whether employees are paid for their services through a weekly paycheck, fringe benefits, or a combination thereof. Such payments and benefits are compensation. Similarly, an employee contributes to a pension plan from his compensation, whether such contribution is deducted from his weekly paycheck or whether the employer "pays" it for him. The mode of payment is not controlling, for, ultimately, the payment is made out of the employee's compensation. Accordingly, the employee subject to STRS contribute eight percent of his compensation to the system even though his employer "picks up" such payments. I conclude, therefore, that an employer is permitted to "pick up" part or all of the teacher contributions to STRS.

Accordingly, it is my opinion, and you are so advised, that an employer is permitted to "pick up" part or all of the teacher contributions required to be made to the State Teacher's Retirement System pursuant to R.C. 3307.51.