

1925

WHERE A STATE EMPLOYEE DESIRES TO INSTITUTE A CHECKOFF ON HIS WAGES—THE PROPER PROCEDURE FOR SUCH—§§9.41, 115.35 R.C.

SYLLABUS:

Where a state employee desires to institute a checkoff on his wages under Section 9.41, Revised Code, the proper procedure is as follows:

1. The employee should give written authorization to the head of the particular department, office, institution, or other agency of the state in which he is employed, stating (a) the amount to be withheld from his wages and (b) the name and address of the organization to which the checkoff of wages is to be paid;
2. Such head of a department, office, institution, or other agency of the state may approve such checkoff of wages.
3. Upon such written authorization and approval the amount of the checkoff is a valid claim against the state under Section 115.35, Revised Code, and the auditor of state should draw a warrant in such amount on the treasurer of state and in favor of the designated organization.

Columbus, Ohio, December 28, 1960

The Honorable Michael V. DiSalle, Governor of the State of Ohio  
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As you will recall, the 103rd General Assembly passed Sub. S. B. 209, relative to the checkoff of organization dues from the wages of public employees. The provisions of this bill became Section 9.41 of the Revised Code of Ohio, which reads as follows:

“Notwithstanding section 1321.32 of the Revised Code, the state of Ohio and any of its political subdivisions or instrumentalities may checkoff on the wages of public employees for the payment of dues to a labor organization or other organization of public employees upon written authorization by the public employee. Such authorization may be revocable by written notice upon the will of the employee.

“A labor organization or other organization of public employees receiving such checkoff of dues may be required by the state of Ohio and any of its political subdivisions or instrumentalities to defray the actual cost of making such deductions.’

“The statutory language quoted above is ambiguous in that it does not expressly confer authority upon a specific state official or designated class of state officials. Obviously, the State of Ohio, as such, is not able to decide whether or not to checkoff organization dues under the provisions of this section. With respect to payroll deductions for charities, under Sections 9.80 and 9.81 R.C., you will observe that certain state officials are authorized to approve the payroll deduction plan.

“Your assistance is sought in resolving the ambiguity existing in Section 9.41 R.C. In your opinion, who, if anyone, is empowered to represent the State of Ohio in exercising the discretion conferred by the statute to checkoff organization dues from wages of public employees?”

As I understand it, a “checkoff on the wages of public employees” as used in Section 9.41, Revised Code, would mean that the amount of the labor organization or other organization dues owed by those employees would be withheld from their wages (upon their authorization) and paid to the designated organization by the employer. The question raised by your request concerns the procedure to be followed by the state in operating such a “checkoff” system.

As you note, the statute does not expressly confer authority upon a specific state official or designated class of state officials as is the case with Sections 9.80 and 9.81, Revised Code, pertaining to deductions from salaries for charities. Said Section 9.81 provides that an employee wishing to make a contribution to a charitable organization may request the fiscal officer of the governmental agency concerned to deduct the amount from his wages, and the fiscal officer is given authority to deduct the amount and to issue a warrant in that amount to the designated agency. In addition to Sections 9.80 and 9.81, *supra*, other statutes allowing payroll deductions include Sections 9.40, 1737.22 and 1739.15, Revised Code.

Section 9.40, *supra*, providing for a payroll deduction plan for purchase of United States savings bonds by public employees, states that a public employee "shall be granted such payroll deductions upon request to the head of the state or political subdivision by whom he is employed." No further procedure is provided. Section 1737.22, *supra*, authorizing deductions for medical care plans, states:

"\* \* \* Such authorization shall be evidenced by an approval of the head of the department, division, office, or institution in which such employee is employed.

"In the case of employees of the state, such authorization shall be directed to and filed with the auditor of state. In the case of employees of a county, municipal corporation, township, or other political subdivisions or district of the state, such authorization shall be directed to and filed with the auditor or other fiscal officer of such county, municipal corporation, township, or other political subdivision or district. In the case of employees of any institution supported in whole or in part by the state, such authorization shall be directed to and filed with the auditor or other fiscal officer of such institution.

"Upon filing with him of such authorization, such auditor or fiscal officer shall draw a warrant, in favor of the medical care corporation referred to in such authorization, for the amount covering the sum of the deductions thereby authorized."

Section 1739.15, *supra*, authorizing deductions for hospital service plans, reads:

"An employee of the state, of any political subdivision or district of the state, or of any institution supported in whole or in part by the state, or any person receiving a pension or retirement pay from the state or any political subdivision of the state or from any board or commission created by state law or municipal ordi-

nance to administer pension or retirement funds may authorize the deduction from his salary, wages, pension or retirement pay of the amount of his subscription payments to any hospital service association. Such authorization by an employee of the state shall be evidenced by an approval of the head of the department, division, office, or institution in which such employee is employed, directed to and filed with the auditor of state. The auditor of state shall draw a state warrant, in favor of the hospital service association stipulated in such authorization, for the amount covering the sum of the deductions authorized in the payroll of the department, division, office, or institution. The governing body of any political subdivision or district of the state, of any institution supported in whole or in part by the state, or any pension or retirement fund or plan, may authorize deductions from the salaries, wages, pensions, or retirement pay of any of its employees, pensioners or retired persons subscribing to such an association's hospital service plan."

If the provisions of Section 9.41, *supra*, here in question, included a procedure similar to that found in Sections 9.81, 1737.22, or 1739.15, *supra*, your question would probably not have arisen. Since the section does not contain any specific language as to how the "checkoff" is to be accomplished, it remains to be seen whether a procedure for such accomplishment may be derived from existing statutes.

Regarding the purpose of the legislature in enacting a particular provision, it is stated in 37 Ohio Jurisprudence, Section 361, page 656:

"The presumption is that the general assembly had a definite purpose in each and every enactment and all its provisions. Moreover, judicial notice may be taken of the purpose of enacting a particular statute where such purpose is a matter of sufficient common knowledge."

Section 362 of the same volume, relating to construction of a statute, states starting at page 657:

"Statutes are to be given a fair and reasonable construction in conformity to their general object, in order to effectuate such object and purpose, and should not be given such an interpretation as would thwart that purpose. If the words and language are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. Accordingly, it is not surprising to find the courts frequently referring to the legislature's purpose, or plan, or aim, or end, or motive."

And Section 363 of the same volume, discussing the design of a statute, starting at page 662, reads :

“In construing a statute, courts frequently refer to the ‘design’ thereof, or to that which is ‘designed’ to be accomplished thereby. When the real design of a legislature, in ordaining a statute, although it is not precisely expressed, is yet plainly perceivable or ascertainable with reasonable certainty, the language of the statute should be given such a construction as will carry that design into effect.”

Section 9.41, *supra*, clearly provides that a state employee may authorize a checkoff of his wages for the payment of dues to a labor organization, and that the state of Ohio, his employer, may checkoff said wages upon such authorization. There is no specific language stating that the state of Ohio shall pay the amount withheld to the labor organization, however, authority to so do may be reasonably implied from the meaning of the word “checkoff” and in that the last paragraph of the section assumes that the labor organization will receive the checkoff of dues. Obviously, therefore, in enacting Section 9.41, *supra*, the legislature intended that the state may checkoff the labor organization or other organization dues of an employee upon his authorization; and this intent should be followed if at all possible in construing the effect of the statute. As stated in 37 Ohio Jurisprudence, Section 275, page 508 :

“A construction adopted should not be such as to defeat the obvious intention of the legislature or do violence thereto, wholly or partially, but rather one which would carry such intention into effect.”

While, as you state, the state of Ohio, as such may not be able to decide whether or not to checkoff organization dues under the section, it cannot be denied that each state officer acts for the state in his official capacity. Also, each state employee is under the supervision of a head of a department, institution, or other agency of the state, and it would appear that if a head of a department, etc., approved a request of an employee for checkoff under Section 9.41, *supra*, it would be tantamount to the state approving such checkoff. Approval of the head of the department would not, however, be the final step as the auditor of state has the duty to determine what are valid claims against the state and to draw warrants on the treasurer of state for amounts which he finds due. In this regard, Section 115.35, Revised Code, reads :

“The auditor of state shall examine each voucher presented to him, or claim for salary of an officer or employee of the state,

or per diem and transportation of the commands of the national guard, or sundry claim allowed and appropriated for by the general assembly, and if he finds it a valid claim against the state and legally due and that there is money in the state treasury appropriated to pay it, and that all requirements of law have been complied with, he shall issue a warrant on the treasurer of state for the amount found due, and file and preserve the invoice in his office. He shall draw no warrant on the treasurer of state for any claim unless he finds it legal and that there is money in the treasury which has been appropriated to pay it."

Your specific question is directed to the question of discretion in allowing a checkoff under Section 9.41, *supra*. It will be noted that the section uses the word "may" in three places: the state of Ohio "may check-off"; such authorization "may be revocable" and a labor organization or other organization "may be required," etc. The use of the word "may" is generally construed to make the provision in which it is contained optional or permissive (37 Ohio Jurisprudence, Section 29, page 327); however under certain circumstances the word "may" is read as "shall" (37 Ohio Jurisprudence, Section 31, page 328). In view of the fact that the word "may" is used throughout the section here considered I am of the opinion that this is not one of the instances where that word may be interpreted to impose an imperative obligation, although it might be argued that the legislature intended to give public employees a right to a checkoff of wages where they so desired it. I conclude, therefore, that when a state employee gives written authorization to his head of department, office, or other agency of the state, as the case may be, such head of department, etc., has the discretion to approve or not approve the requested checkoff and, when approved, the amount of the checkoff is a valid claim against the state and the auditor of state has a duty under Section 115.35, Revised Code, to draw warrants in such amounts in favor of the designated organization.

Accordingly, it is my opinion and you are advised that where a state employee desires to institute a checkoff on his wages under Section 9.41, Revised Code, the proper procedure is as follows:

1. The employee should give written authorization to the head of the particular department, office, institution, or other agency of the state in which he is employed, stating (a) the amount to be withheld from his wages and (b) the name and address of the organization to which the checkoff of wages is to be paid;
2. Such head of a department, office, institution, or other agency of the state may approve such checkoff of wages;

3. Upon such written authorization and approval the amount of the checkoff is a valid claim against the state under Section 115.35, Revised Code, and the auditor of state should draw a warrant in such amount on the treasurer of state and in favor of the designated organization.

Respectfully,

MARK McELROY

Attorney General