

Note from the Attorney General's Office:

1959 Op. Att'y Gen. No. 59-38 was overruled in part by 1962 Op. Att'y Gen. No. 62-2868.

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EMPLOYEES, PUBLIC — AUTHORIZED PAYROLL DEDUCTION, PREMIUMS ON ANNUITY CONTRACT ISSUED UNDER GROUP PLAN.

SYLLABUS:

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.

Columbus, Ohio, January 20, 1959

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“Our attention has been called to Section 401 (A) (1) of the Internal Revenue Code which provides that an annuity may be purchased by corporations described in Section 501 (C) (3) of the code for the benefit of employees of said corporation.

The Internal Revenue Regulations have suggested certain limitations regarding the amount to be expended which if followed will permit the corporation to deduct the annuity payment from the salary paid to the employee and charge it off as a current business expense. The employee, in turn, is not required to report as income the amount received until payments are made under the annuity contract.

“The Maumee Valley Hospital, which is a County Hospital operated by a Board of Trustees appointed by County Commissioners of Lucas County, has inquired whether it is permissible for it to enter into annuity agreements for certain physicians on their staff because the salary paid to these physicians is controlled by Civil Service regulations. We are requesting your opinion as to whether it is permissible for deduction to be made by a county institution at the request of an employee to make payments under an annuity contract for the benefit of said employee.”

Your attention is invited initially to Section 3917.04, Revised Code, which reads as follows:

“If an employee of a political subdivision or district of this state, or of an institution supported in whole or in part of 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 premiums, 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.” (Emphasis added)

The terms “group plan” and “salary savings plan” mentioned in the statute are not defined. An opinion by one of my predecessors, Opinion No. 2778, Opinions of the Attorney General for 1940, page 878, contains a discussion of these terms as used in former Section 9426-1a, General Code. This opinion reads in part as follows:

“You will note that deductions from the salary or wages of public employes described in this section are authorized only

to pay premiums or portions thereof for the kinds of insurance enumerated insuring a group under the group plan or salary savings plan. The expressions "group" and "group plan" as applying to accident, health and accident or hospitalization insurance, are not defined in our statutes nor is the term "salary savings plan" as applying to any kind of insurance defined in our laws. Although the terms "group" and "group plan" have no statutory definition as applied to your question and while it would be impossible accurately to limit the meanings of these terms in detail, nevertheless an examination of several text-books on insurance law disclose that these terms almost invariably contemplate the issuance of a so-called master contract or policy of an employer whereby insurance for the benefit of his employees is effected. I have been unable to find any authority either in the cases or in text-books to the effect that the issuance of individual policies to the employees of a common employer without any master policy or contract could be insurance on a group. It also appears that group insurance ordinarily, although not always, ceases upon the termination of the employment."

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.

I must, of course, refrain from expressing any opinion as to whether any particular annuity deductions made by the hospital from the pay of its employees would qualify under Section 401 (A) (1) of the United States Internal Revenue Code, this for the reason that any decision on this matter must necessarily be made by the federal authorities concerned.

Accordingly, it is my opinion and you are advised that 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.

Respectfully,
MARK McELROY
Attorney General