

OPINION NO. 86-051**Syllabus:**

A payroll deduction may be made from the salary or wages of a county employee when the particular deduction is specifically authorized by statute. The duties and powers of the board of county commissioners and the county auditor with regard to the allowance of a particular payroll deduction from the salary or wages of a county employee are those set forth in the statute authorizing the deduction.

To: Peter R. Selbel, Defiance County Prosecuting Attorney, Defiance, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 29, 1986

I have before me your opinion request in which you ask:

First, are payroll deductions legal as they relate to specific County purposes such as the provision of health insurance coverage for County employees and payment of union dues for County employees in the union?

Second, are payroll deductions legal for private matters if requested by the County employee, such as United Way and cancer insurance?

Third, if payroll deductions, whether private or public, are legal, who has the final decision as to whether or not a specific deduction will be allowed? Do the County Commissioners have the authority to require the Auditor to make specific payroll deductions or to prohibit her from making certain deductions? Or can the Auditor solely determine which deductions she will permit?

In order to answer your questions, it is first necessary to set forth the general rule that, "the authority of an official charged with keeping payroll records of the state, one of its political subdivisions, or one of its instrumentalities is limited to that conferred by statute." 1981 Op. Att'y Gen. No. 81-006 at 2-20. Various provisions of the Revised Code specifically provide for payroll deductions to be made from the wages or salaries of certain public employees, and, in most instances, specify the procedure to be followed in making such deductions. Thus, whether payroll deductions for a particular purpose may be made for county employees depends upon whether a statute authorizes that particular type of deduction. See 1958 Op. Att'y Gen. No. 2576, p. 513 (syllabus, paragraph one) ("[t]he auditor of state may make deductions from the salary of a state employee only where such action is specifically authorized by statute" (emphasis in original)). See, e.g., 1960 Op. Att'y Gen. No. 1244, p. 224 (overruled by 1981 Op. Att'y Gen. No. 81-006 due to the enactment of R.C. 9.42 (1965 Ohio Laws 5) (Am. Sub. H.B. 56, eff. June 2, 1965) allowing the deduction in question) (concluded that county auditor had no authority to make payroll deductions from county employees' salaries for municipal income tax); 1958 Op. No. 2576 (syllabus, paragraph two) (concluded that state auditor had no

authority to make payroll deductions for payment to credit unions)(R.C. 9.43 was subsequently enacted to allow such deductions).

Your opinion request asks about county employee payroll deductions generally and lists four examples of deductions: premiums for county employees' health insurance, premiums for various other types of insurance, union dues, and United Way contributions. Although there are other types of public employee payroll deductions which are authorized by statute, see, e.g., R.C. 9.43 (public employee payroll deductions for savings in share accounts in chartered credit unions), this opinion will discuss only those payroll deductions about which you have asked.

I will first address the authority to make payroll deductions from the wages or salaries of county employees for insurance purposes. R.C. 1737.22 provides that an employee of a political subdivision, among others, "may authorize the deduction from his salary or wages of the amount of his subscription payments to any corporation provided for in [R.C. 1737.02-.20]" (medical care corporations). R.C. 1737.22 also sets forth the procedure for implementing such deduction, stating:

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 a political subdivision, such authorization shall be directed to and filed with the fiscal officer of such political subdivision....

Upon the filing with him of such authorization, the...fiscal officer shall provide for payment to the medical care corporation referred to in such authorization, for the amount covering the sum of the deductions thereby authorized.

Since a county is a political subdivision, Zents v. Board of Commissioners, 9 Ohio St. 3d 204, 459 N.E.2d 881 (1984), R.C. 1737.22 entitles county employees to authorize payroll deductions for subscription payments to medical care corporations provided for in R.C. 1737.02-.20. Pursuant to R.C. 1737.22, in order to effect such deductions, a county employee's authorization "shall be evidenced by an approval of the head of the department, division, office, or institution" in which he is employed. Such authorization is then to be "directed to and filed with the fiscal officer" of the county, who is the county auditor.¹

A provision analogous to R.C. 1737.22 is set forth in R.C. 1738.13 concerning subscription payments to corporations provided for in R.C. 1738.01-.21, health care corporations. The procedure prescribed by R.C. 1737.22 for implementing such deductions is identical to that provided for in R.C. 1738.13.

¹ Although the term "fiscal officer" is not defined for purposes of R.C. 1737.22, in the case of county government, the term is generally understood to refer to the county auditor. See, e.g., R.C. 5705.01(D); 1968 Op. Att'y Gen. No. 68-093.

Public employee payroll deductions for subscription payments to hospital service associations are authorized by R.C. 1739.15, which states:

An employee of the state, of any political subdivision 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 ordinance 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 director of administrative services. The director of budget and management shall provide for payment to the hospital service association specified in such authorization, for the amount covering the sum of the deductions authorized. The governing body of any political subdivision of the state, or of any institution supported in whole or in part by the state, or of any pension or retirement fund or plan may authorize deductions from the salaries, wages, pension, or retirement pay of any of its employees, pensioners, or retired persons subscribing to such an association's hospital service plan. (Emphasis added.)

R.C. 1739.15 thus entitles a county employee to authorize the deduction from his salary or wages the amount of his subscription payments to a hospital service association. See 1961 Op. Att'y Gen. No. 2173, p. 227 (syllabus) ("under [R.C. 1739.15], a county employee may authorize deductions from his salary for the payment of Blue Cross and Blue Shield premiums..."). The statute also authorizes the governing body of the county, the board of county commissioners, see 1982 Op. Att'y Gen. No. 82-006, to authorize deductions from the salaries or wages of any county employees subscribing to such an association's hospital service plan.

Although R.C. 1739.15 sets forth the manner in which state employees may implement such deductions, R.C. 1739.15, unlike R.C. 1737.22 and R.C. 1738.13, sets forth no procedure by which such deductions for county employees are to be implemented. R.C. 1739.15, however, permits either the county employees themselves or the board of county commissioners to authorize such deductions. In addition, I note that, in the event that a county employee authorizes a deduction provided under R.C. 1739.15, neither the board of county commissioners nor the county auditor may refuse to allow such deduction. Similarly, where the board of county commissioners authorizes a payroll deduction for county employees under R.C. 1739.15, the county auditor has no authority to disallow such deduction.

Further authorization for public employee payroll deductions for insurance purposes is found in R.C. 3917.04 which states:

If any employee of a political subdivision or district of this state, or of an institution supported in whole or in part by 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 insurance, 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 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 any institution or of any political subdivision or in any department, agency, bureau, district, commission or board voluntarily elect to participate in such group insurance.

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.

Pursuant to this provision, a county employee may authorize the county auditor, see 1971 Op. Att'y Gen. No. 71-047, to deduct from his salary or wages all or part of the premium which he has agreed to pay 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. R.C. 3917.04 does, however, impose certain limitations on the circumstances in which deductions may be made under that statute. But for annuities or salary savings plan deductions, all types of insurance described in R.C. 3917.04 must be offered to the employee on a group basis, and "at least ten per cent of the employees at any institution or of any political subdivision or in any department, agency, bureau, district, commission or board [must] voluntarily elect to participate in such group insurance," R.C. 3917.04, in order for such deduction to be made. See generally Op. No. 71-047 at 2-161 (the amendment of R.C. 3917.04 in 1967-1968 Ohio Laws, Part I, 1338 (Am. Sub. H.B. 93, eff. May 17, 1967) appears "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"); 1968 Op. Att'y Gen. No. 68-064 (method for payroll deductions under R.C. 3917.04 for Cleveland Public Library employees).

Thus, whether a county employee may pay for various types of insurance premiums by payroll deduction is dependent upon whether such insurance falls within any of the statutes which expressly authorize such deductions. Further, the procedure set forth in the applicable statute must be followed in order to implement a payroll deduction under that statute. The board of county commissioners and the county auditor have authority with regard to the allowance of such deduction for insurance purposes to the extent provided by the statute authorizing such deduction.

You next ask about the permissibility of payroll deductions for county employees who wish to pay union dues by that

method. In 1983-1984 Ohio Laws, Part I, 336 (Am. Sub. S.B. 133, eff. in part, April 1, 1984), the General Assembly established collective bargaining procedures for, among others, counties and county employees. R.C. 4117.01(B). Pursuant to R.C. 4117.10, where an agreement has been entered into under R.C. Chapter 4117 between the county and an exclusive representative, as that term is defined in R.C. 4117.01(E), the agreement governs the wages, as defined in R.C. 4117.01(L), hours, and terms and conditions of employment. R.C. 4117.09 states, in pertinent part:

(A) The parties to any collective bargaining agreement shall reduce the agreement to writing and both execute it.

(B) The agreement shall contain a provision that:

....
(2) Authorizes the public employer to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee.

(C) The agreement may contain a provision that requires as a condition of employment...that the employees in the unit who are not members of the employee organization pay to the employee organization a fair share fee....The deduction of a fair share fee by the public employer from the payroll check of the employee and its payment to the employee organization is automatic and does not require the written authorization of the employee.

Thus, where a collective bargaining agreement has been entered into between the county and the exclusive representative of a unit of county employees, R.C. 4117.09(B)(2) requires that the agreement contain a provision which authorizes the deduction of dues, initiation fees, and assessments of members of the employee organization upon presentation of a written deduction authorization by the employee. Further, R.C. 4117.09(C), permits the agreement to provide for the automatic deduction of a fair share fee from the payroll check of employees in the unit who are not members of the employee organization.

You also ask whether payroll deductions for United Way contributions by county employees are permissible. Public employee payroll deductions for charitable purposes are governed by R.C. 9.80 which states in part: "the budgeting authority of any political subdivision...may authorize a payroll deduction plan for contributions by employees to one or more specified charitable agencies which are corporations not for profit, community chests, united funds, or other similar united community fund organizations." The term "budgeting authority" is not defined for purposes of R.C. 9.80. In the case of counties, however, R.C. 5705.28(A) requires the taxing authority of the county, i.e., the county commissioners, R.C. 5705.01(C), to adopt a tax budget for the county for the next succeeding fiscal year. See generally 1986 Op. Att'y Gen. No. 86-048 (discussing county tax budgets). Thus, it appears that, pursuant to R.C. 9.80, the board of county commissioners, as the "budgeting authority" of the county, "may" authorize a payroll deduction plan for charitable agencies of the type enumerated in the statute, and in such plan may specify the agencies for which such deductions may be made. The adoption of such a plan by the board of county commissioners appears, however, to be a discretionary matter. See generally Dorrian

v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word 'may' shall be construed as permissive...unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its] ordinary usage").

In the event that the county commissioners adopt a plan in accordance with R.C. 9.80 authorizing payroll deductions for specified charitable agencies, the procedure for implementing such deductions is governed by R.C. 9.81 which states in part:

After an authorization adopted under section 9.80 of the Revised Code, any public officer or employee of...any political subdivision...who desires to make a contribution by the payroll deduction plan to one or more of the specified charitable agencies which are corporations not for profit, community chests, united funds, or other similar united community fund organizations, may be permitted to have such contribution payments deducted from the salary or wages due such public officer or employee by filing a written request and authorization signed by such public officer or employee and specifying the amount of the deduction in each payroll period with the fiscal officer of the...political subdivision...by which such public officer or employee is employed. Such authorization may be withdrawn in writing by such public officer or employee at any time. No funds may be withheld from the salary or wages of any such public officer or employee for the purposes permitted by sections 9.80 and 9.81 of the Revised Code unless the withholding is specifically, freely, and voluntarily authorized by said public officer or employee in writing.

Upon receipt of evidence of such request by the appropriate fiscal officer, such fiscal officer shall make such deduction and shall, at periodic intervals to the extent of the amount collected, issue a warrant or warrants in favor of the designated charitable agencies which are corporations not for profit, community chests, united funds, or other similar united community fund organizations.

County employees may, therefore, authorize payroll deductions for those charitable agencies specified in the plan adopted by the board of county commissioners in accordance with R.C. 9.80. See generally State ex rel. Leach v. Price, 168 Ohio St. 499, 156 N.E.2d 316 (1959) (discussing statutory authorization for payroll deductions for public employees). Pursuant to R.C. 9.81, such a deduction for county employees is implemented by the county employee's filing with the county auditor, see R.C. 319.16; note one, supra, a written request and authorization specifying the amount of the deduction. R.C. 9.81 then imposes upon the county auditor the duty of making such deductions and issuing warrants to the designated charitable agencies.

Thus, in the situation you present, the county auditor shall make payroll deductions for those employees who have filed written requests and authorizations with the county auditor for contributions to any eligible charitable agency included within the plan adopted by the board of county commissioners in accordance with R.C. 9.80.

It is therefore, my opinion, and you are advised that, a payroll deduction may be made from the salary or wages of a county employee when the particular deduction is specifically authorized by statute. The duties and powers of the board of county commissioners and the county auditor with regard to the allowance of a particular payroll deduction from the salary or wages of a county employee are those set forth in the statute authorizing the deduction.