

Note from the Attorney General's Office:

1940 Op. Att'y Gen. No. 40-2778 was overruled in part by 1962 Op. Att'y Gen. No. 62-2868.

2778.

INSURANCE — INDIVIDUAL POLICIES — HEALTH, ACCIDENT OR HOSPITALIZATION — AUDITOR OR OTHER PROPER OFFICER OF SUBDIVISION, DISTRICT, INSTITUTION OR STATE, NOT AUTHORIZED TO DEDUCT FROM SALARY OR WAGES OF PUBLIC EMPLOYEE, PREMIUM TO PAY SUCH INSURANCE — SECTION 9426-1a G. C.

SYLLABUS:

Where individual policies of health, accident or hospitalization insurance are issued to employes of the State of Ohio or a political subdivision or district thereof or of an institution supported in whole or in part by public funds, Section 9426-1a, General Code, does not authorize the auditor or other proper officer of the subdivision, district, institution or the State of Ohio to deduct from the salary or wages of such employes the premium or any portion thereof agreed to be paid by such employes to an insured, even though such employes may have authorized such auditor or other proper officer in writing so to do.

Columbus, Ohio, September 17, 1940.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your letter of recent date with which you enclosed a letter from an insurance company and pamphlets outlining plans of insurance issued by such insurance company against disability and hospitalization. You ask my opinion as to whether it is compulsory for the auditor or other proper officer of the political subdivisions or districts, institutions supported in whole or in part by public funds, or of the State of Ohio to make deductions from the salary or wages of employes of such political subdivisions, districts, institutions or the State of Ohio who have contracted for the insurance outlined in such pamphlets and who have authorized such officer in writing to make such deductions.

One of the plans outlined provides for insurance against sickness, injuries and accidents and the other provides insurance for the purpose of paying hospital, surgical, nursing and medical expense. In both plans, individual policies are issued to the insured and, according to the pamphlets, no particular number of employes is required for the installation of the plan, although the letter states that at least five employes are required. In addition, it appears that the insurance is continued in force even though the employment be terminated.

Section 9426-1a, General Code, provides as follows:

"In the event that any employe of a political subdivision or district of the state of Ohio, or of an institution supported, in whole or in part, by public funds, or any employee of the state of Ohio, authorizes in writing the auditor or other proper officer of the political subdivision, district, institution or the state of Ohio, 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 of Ohio 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 Ohio of which he is an employee is authorized to deduct from his salary or wages such premium, or portion thereof, so agreed to be paid by said employee and to pay the same to the insurer. The auditor, or other proper official, of such political subdivision, district, institution or the state

of Ohio, of which he is an employee, is hereby empowered to 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 such employee."

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, 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 discloses that these terms almost invariably contemplate the issuance of a so-called master contract or policy to an employer whereby insurance for the benefit of his employes 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 employes 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.

In the plans submitted by you for my consideration, no master policy is contemplated and the insurance provided continues in force until the end of the policy term even if the employee terminates his employment.

I therefore take the view that the proposed plans described above are not insurance covering a "group" within the meaning of that term as used in Section 9426-1a, General Code, *supra*; and since the proposed plans are not comprehended within the terms of this section, it becomes unnecessary for me to determine whether the provisions thereof with respect to deductions by the auditor or other proper officer would be mandatory or merely permissive in case the insurance in question were one of the classes described in the section.

Specifically answering your question, I am of the opinion that where individual policies of health, accident or hospitalization insurance are issued to employes of the State of Ohio or a political subdivision or district thereof or

of an institution supported in whole or in part by public funds, Section 9426-1a, General Code, does not authorize the auditor or other proper officer of the subdivision, district, institution or the State of Ohio to deduct from the salary or wages of such employes the premium or any portion thereof agreed to be paid by such employes to an insured, even though such employes may have authorized such auditor or other proper officer in writing so to do.

Respectfully,

THOMAS J. HERBERT,
Attorney General.