



ALAN WILSON
ATTORNEY GENERAL

March 29, 2024

The Honorable Bill Herbkersman
Member
South Carolina House of Representatives
308-C Blatt Building
Columbia, SC 29201

Dear Representative Herbkersman:

Attorney General Alan Wilson has referred your letter to the Opinions section. Because your letter states, “time is of the essence” and requests a prompt reply, it has been considered on an expedited basis.

The letter describes a “Total Wellness Program ... focused on preventative health initiatives.” The program is further described as “a Health and Accident Plan, not a fixed indemnity plan.” You ask:

- 1) In the event enough employees decide to ‘sign on the line’ asking our Comptroller General to set up a payroll deduction to cover the cost of any wellness program under S.C. Code § 8-11-80, is it your opinion that such a plan is a type of program that the Comptroller General could approve for this deduction?
- 2) If it is your opinion that our Comptroller General has this authority, is it also your opinion that the materials attached as Exhibit D would sufficiently support the addition of this state employee payroll deduction so long as enough state employees sign the petition section of it, and in compliance with S.C. Code § 8-11-80?

Law/Analysis

It is this Office's opinion that S.C. Code § 8-11-80 authorizes the Comptroller General to make deductions from state employee payrolls, upon the request of two hundred fifty employees, “for the payment of premiums for life, hospital, and other types of insurance plans as are in force”

and a member of the deduction system on the effective date of this act.¹ As described in the attachments to your letter, it is unclear if such a plan could be fairly categorized as “insurance.” Title 38 of the South Carolina Code of Laws defines “insurance” as “a contract where one undertakes to indemnify another or pay a specified amount upon determinable contingencies.” S.C. Code § 38-1-20(25). It seems unlikely that a wellness program focused on preventative health initiatives could fairly be interpreted to come within this definition, particularly when it is stated not to be “a fixed indemnity plan.” However, this program is also described as “a Health and Accident Plan.” Title 38, of the South Carolina Code includes “Accident and health insurance” within the insurance code.² This Office’s opinions cannot anticipate how these seemingly conflicting descriptions will be resolved. See Op. S.C. Att’y Gen., 2006 WL 1207271 (April 4, 2006) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.”). This question is better addressed to the Office of the Comptroller General for determination as it is charged with administering the statute. See Op. S.C. Att’y Gen., 2022 WL 1286845, at 2 (April 20, 2022) (“It is this Office's long-standing policy, like that of our state courts, to defer to an administrative agency's reasonable interpretation of the statutes and regulations that it administers.”).

We note that this Office has consistently advised state employee payroll deductions may only be made for those purposes authorized by statute. For instance, in 1976 we explained that a court had found the City of Charlotte “had no standards for approving or disapproving deductions” and as a result “it could not refuse to make deductions for labor union dues upon request.” 1976 S.C. Op. Att’y Gen. 129. The opinion highlighted that, although South Carolina had a statute addressing deductions, “it is not uniformly complied with. Some agencies have in the past, and I presume are now making deductions from wages for various purposes, such as credit union payments, and perhaps charities.” Id. To avoid a similar ruling, Attorney General McLeod suggested that “it will be appropriate to make sure that only allowable deductions are made from payrolls.” The Legislature responded by specifically permitting deductions for credit union payments, charities, and other purposes. See S.C. Code §§ 8-11-70, -99 (authorizing payroll deductions for specific purposes). Subsequent opinions have stated more directly that state employee payroll deductions cannot be made except where authorized by statute.

In 1980, we addressed whether the Comptroller General may take deductions from State employee wages for contributions to a particular charity. Op.

¹ The emphasized language restricting the “type of insurance” to those then in the deduction system was initially added in 1978 by Act No. 644 Part II § 21. The statute was last amended by 1985 Act No. 201, Part II, § 74.

² “Accident and health insurance” is defined as “insurance of human beings against death or personal injury by accident, and each insurance of human beings against sickness, ailment, and any type of physical disability resulting from accident or disease, and prepaid dental service, but not including coverages required by the Workers' Compensation Law of this State.” S.C. Code § 38-1-20.

March 29, 2024

S.C. Atty. Gen., August 29, 1980. We noted that although State Personnel Regulations allow solicitations by charitable organizations, these regulations do not “include authorization for deduction of contributions from the State employees' payroll, which may be permitted only by statute.” *Id.* In numerous other opinions, this Office similarly concluded that payroll deductions require statutory authorization. See Op. S.C. Atty. Gen. June 27, 2002 (finding a public service district could not make deductions from employees' wages for association membership dues because such a deduction was not authorized by statute); June 21, 1988 (determining that payroll deductions for property and casualty insurance are not permitted because no statutory authority exists); January 4, 1982 (concluding that payroll deductions for Individual Retirement Accounts are not permitted due to lack of statutory authorization). Accordingly, to answer your question, we do not believe that deductions can be taken from a State employee's wages absent express authorization by the Legislature.

Op. S.C. Att'y Gen., 2011 WL 380161 (January 18, 2011) (emphasis added). In the absence of a change in law, it remains this Office's opinion that deductions cannot be taken from a state employee's wages unless it is expressly authorized by the Legislature. Op. S.C. Att'y Gen., 2017 WL 5203263 (October 31, 2017) (“This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law.”). If the proposed wellness program is not found to be authorized under the terms of S.C. Code § 8-11-80 or other statute, legislation would be necessary to authorize it as a new type of deduction.

Finally, your letter asks whether the attached materials would sufficiently support the addition of a payroll deduction in the event that the statutory minimum number of state employees elect to do so. The attached materials are titled “Request Form,” “State of SC Individual Employee Request Form,” and a “State of SC Multiple Employees Request Form by Agency.” Although these attachments appear tailored to address S.C. Code § 8-11-80, this Office cannot offer an opinion on whether these forms satisfy the criteria for the Office of the Comptroller General.

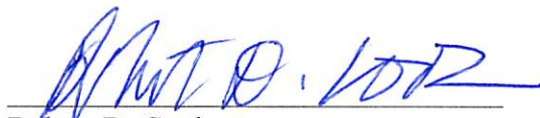
Sincerely,



Matthew Houck

Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General