

OPINION NO. 89-031**Syllabus:**

Notwithstanding R.C. 1321.32, in the absence of a statute authorizing a payroll deduction for employees of a county library district for the provision of various amenities for the library staff, no such payroll deduction may be made.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 16, 1989

I have before me your opinion request concerning the authority of a board of trustees of a county library district to adopt a payroll procedure for the library district's employees whereby a deduction would be made from the salary of each employee who authorized such deduction to be made for the maintenance of a "staff fund." By way of background, your opinion request sets forth the following information:

The intended use of the staff fund is to cover the costs of flowers for events such as funerals, hospitalizations and other catastrophic occurrences affecting staff members....

The staff fund would meet the library board's approval. Individual staff employees' participation will be voluntary. Those wishing to participate would submit a signed payroll deduction authorization and will be permitted to revoke the authorization at any time. Each staff member would have the option of choosing the amount to be deducted from each payroll....No collective bargaining agreement is involved. The Board of Trustees, as employer, and individual employees would be in agreement on the payroll deductions for, and maintenance and use of the funds.

Based upon this plan, you specifically ask:

Does the language of [R.C. 1321.32] or any other law authorize payroll deductions from the wages of library employees for the maintenance of a "staff fund" for payment of various personal contributions for expenditures related to unofficial events affecting public employees, such as funerals, marriages, retirements and other similar activities, where no specific statutory authorization for such payroll deductions exists?

In order to answer your question, it is first necessary to examine the statutory scheme governing the operation of county library districts. R.C. 3375.19 provides for the creation of a county library district. Within a county library district, the free public library of the district is under the control and management of the board of library trustees appointed under R.C. 3375.22, which states in part: "Such board of library trustees shall organize in accordance with [R.C. 3375.32]. Such board of library trustees shall have the control and management of the county district free public library and in the exercise of such control and management shall be governed by [R.C. 3375.33-41]." Pursuant to R.C. 3375.33, boards of library trustees appointed under R.C. 3375.22, among others, "are bodies politic and corporate, and as such are capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law." The powers of the board of library trustees generally are set forth in R.C. 3375.40, which will be discussed more fully below. Thus, as stated by one of my predecessors: "A board of trustees of a library is created by statute, and has only such powers as are provided in the statute, and such other powers as are reasonably necessary to the accomplishment of the purposes of the board." 1924 Op. Att'y Gen. No. 2003, p. 652 (syllabus, paragraph one).

Each county library district board of trustees is required to meet annually to select the board's officers and to elect and fix the compensation of a clerk. R.C. 3375.32. Concerning the duties of such clerk, R.C. 3375.36 states in pertinent part:

The clerk of the board of library trustees of a free public library shall be the treasurer of the library funds. All moneys received by such clerk for library purposes shall be immediately placed by him in a depository designated by the board. Such clerk shall keep an account of the funds credited to the board. Such clerk shall render a statement to the board monthly showing the revenues and receipts from whatever sources derived, the disbursements and the purposes for such disbursements, and the assets and liabilities of the board. At the end of each fiscal year the clerk shall submit to the board a complete financial statement showing the receipts and expenditures in detail for the entire fiscal year. (Emphasis added.)

Further, pursuant to R.C. 3375.35, "[n]o moneys credited to a free public library shall be paid out except on a check signed by the clerk of the board having jurisdiction over said moneys and the president, vice-president, or secretary of said board."

In the situation about which you ask, it is necessary to keep in mind that a board of library trustees is a creature of statute and, therefore, the board may authorize the type of payroll deduction plan you describe only if it is authorized to do so by statute. You specifically ask whether R.C. 1321.32 provides adequate authority for the allowance of the payroll deduction about which you ask. R.C. 1321.32 states:

Notwithstanding [R.C. 1321.31],¹ no assignment of, or order for wages or salary is valid unless the wages assigned or ordered are to be paid for the support of the employee's spouse or minor child in complying with an order of a court of record for the support of the employee's spouse or minor child. This section does not affect or invalidate any contract or agreement between employers and their employees, or as between employers, employees, and any labor union as to any checkoff on the wages of such employees as may be agreed

¹ R.C. 1321.31 sets forth various limitations on the assignment of, or order for, the wages or salary of various persons and establishes priority of assignments.

upon. *This section and [R.C. 4113.16]² shall not affect or invalidate any deduction from the wages or salary made in accordance with a payroll deduction plan agreed upon between the employer and employee provided that the same be revocable at any time by the employee upon notice to the employer up to the time of payment thereof.* (Emphasis and footnotes added.)

R.C. 1321.32 thus establishes the general rule that, notwithstanding R.C. 1321.31, no assignment of, or order for, wages or salary is valid unless paid in compliance with a court order for the support of the employee's spouse or minor child. The section also provides that it has no effect on an agreement concerning checkoffs on employees' wages. The above-emphasized portion of R.C. 1321.32, however, contains the further qualification that neither it nor R.C. 4113.16 affects or invalidates a payroll deduction made under a plan agreed upon between an employer and employee, provided that the deduction be revocable at any time by the employee. Such qualification operates only as an exception to the general prohibition against wage assignments in both the public and private sectors. It does not, however, establish the requisite authority necessary for a creature of statute, such as a county library district board of trustees, to permit a payroll deduction merely upon agreement between the employer and employee, subject to revocation by the employee. Such authority must be otherwise granted by statute.

The meaning and effect of R.C. 1321.32 were discussed in *State ex rel. Leach v. Price*, 168 Ohio St. 499, 156 N.E.2d 316 (1959), where the court considered the propriety of a municipal ordinance allowing a payroll deduction from a city employee's wages for contribution to his savings account with a credit union. Concerning the provisions of R.C. 1321.32, the court stated:

[R.C. 1321.32] contains certain exceptions to its major provision forbidding wage assignments, and we again call attention to the other sections of the Revised Code which must also be considered as exceptions to such provision, i.e., the authorized deductions for the Public Employees Retirement System, for subscriptions or contributions to medical-care corporations, for hospital-service associations, for authorized charities and for the purchase of United States savings bonds.

...[E]ach of the authorized deductions hereinbefore mentioned, except those for the Public Employees Retirement System, Social Security and United States savings bonds, differs from the instant transaction in that *the employee never sees his money again once it is deducted from his salary and disbursed.* He receives benefits from such expenditure of his money, of course, in the nature of insurance, retention of his membership in a collective bargaining unit which works for his benefit, or the aiding of a worthy charity, but it is clear that he has *spent* his money rather than having *saved* it.

An assignment is defined in 4 American Jurisprudence, 229, Section 2, as "a transfer or setting over of property, or of some right or interest therein, from one person to another, and *unless in some way qualified, it is properly the transfer of one's whole interest* in an estate, or chattel, or other thing."

² R.C. Chapter 4113 contains various miscellaneous labor provisions. R.C. 4113.16 states:

No corporation, contractor, person, or partnership subject to [R.C. 4113.15 (requiring, with certain exceptions, that wages be paid at least semimonthly)] shall, by a special contract with an employee or by other means, exempt itself from this section and [R.C. 4113.15], and no assignments of future wages, payable semimonthly under such sections are valid except as provided in [R.C. 1321.32].

From this, it is clear that an assignment of wages to a medical-care corporation, a hospital-service association, a labor union or a charity is a complete assignment of the assignor's whole interest in the wages assigned and would be invalid as coming within the prohibition of [R.C. 1321.32], in the absence of statutory allowance. It is also clear that an authorized deduction from wages for payment to a credit union for the purpose of having a part of one's wages automatically added to a savings account therein is not a complete assignment within the definition set out and does not fall within the prohibition of [R.C. 1321.32], regarding the assignment of wages. (Emphasis in original.)

168 Ohio St. at 503-05, 156 N.E.2d at 319-20. The court thus concluded that, since a payroll deduction for an employee's savings account does not constitute a complete assignment, it does not fall within the prohibition of R.C. 1321.32.

It is, therefore, evident that R.C. 1321.32 operates generally as a prohibition against the assignment of an employee's wages. As the court in *Price* noted, however, there are specific statutory exceptions to this prohibition, both within R.C. 1321.32 and elsewhere in the Revised Code, see, e.g., R.C. 9.80 (deductions for charitable purposes); R.C. 1737.22 (deductions for payments to medical care corporations); R.C. 1738.13 (deductions for payments to health care corporations); R.C. 3917.04 (deductions for insurance purposes). R.C. 1321.32 does not operate as a general grant of authority to an employer or employee to make payroll deductions. Rather, it merely sets forth a general prohibition against wage assignments while establishing certain exceptions to that prohibition in addition to those otherwise provided by statute.

The payroll deduction plan about which you ask appears to qualify under the test established in *Price* as an assignment. According to the plan as described in your letter, money deducted for deposit in the staff fund would be used for various special events and for such things as flowers for funerals or hospitalizations affecting staff members. The uses of the fund would be determined by staff representatives. Since the employee transfers his whole interest in the amount deducted, such deduction appears to qualify as an assignment prohibited by the terms of R.C. 1321.32, in the absence of legislation expressly allowing such deduction. Thus, whether a county library district board of trustees may authorize the type of deduction about which you ask depends upon whether any other statute empowers the board to allow such deduction.

The powers of a county library district board of trustees are set forth in R.C. 3375.40. Concerning library employees, R.C. 3375.40(G) empowers the board to:

Appoint and fix the compensation of all of the employees of the free public library under its jurisdiction; pay the reasonable cost of tuition for any of its employees who enroll in a course of study the board considers essential to the duties of the employee or to the improvement of the employee's performance; and reimburse applicants for employment for any reasonable expenses they incur by appearing for a personal interview. (Emphasis added.)

R.C. 3375.40(G), thus, expressly empowers the board of library trustees to appoint employees and fix their compensation. Pursuant to such authority, the board could provide the types of amenities about which you ask directly to the employees as a form of compensation. See generally 1982 Op. Att'y Gen. No. 82-006 (syllabus, paragraph one) ("[c]offee, meals, refreshments and other amenities are fringe benefits which may properly be provided by units of local government to their employees as a form of compensation, if authorized by the officer or body having the power to fix the compensation of such employees").

The authorization of a payroll deduction is not, however, a matter of fixing compensation. Rather, it has traditionally been analyzed as a procedural matter related to the preparation and keeping of payroll records. As I stated in 1986 Op.

Att'y Gen. No. 86-051 at 2-271, concerning various payroll deductions for county employees:

[I]t 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.

Concerning the handling of funds of a county library district, R.C. 3375.36, set forth above, specifies that the clerk of the board of library trustees shall be the treasurer of the library funds and "shall keep an account of the funds credited to the board." Pursuant to this statute, the clerk-treasurer is under a duty to deposit all money received by him for library purposes in a depository designated by the board. R.C. 3375.36 imposes further duties upon the clerk-treasurer with regard to reporting to the board as to all receipts, disbursements and the purposes thereof, and the assets and liabilities of the board. *See generally* 1947 Op. Att'y Gen. No. 2549, p. 639 (syllabus, paragraph one) ("[t]he clerk of the board of trustees of a municipal library, when elected and qualified pursuant to [G.C. 7627 (now R.C. 3375.32)],...becomes ex officio treasurer of all funds belonging to such library..."). Concerning the procedure for the payment of library funds, R.C. 3375.35 states: "No moneys credited to a free public library shall be paid out except on a check signed by the clerk of the board having jurisdiction over said moneys and the president, vice-president, or secretary of said board." None of the duties of the clerk of the board of library trustees expressly includes the authority to allow payroll deductions of any kind. Further, no other statute of which I am aware encompasses a payroll deduction for the purposes specified in your opinion request. Thus, I must conclude that such a payroll deduction is not permissible.

Based on the foregoing, it is my opinion, and you are hereby advised that, notwithstanding R.C. 1321.32, in the absence of a statute authorizing a payroll deduction for employees of a county library district for the provision of various amenities for the library staff, no such payroll deduction may be made.