

# The State of South Carolina



## Office of the Attorney General

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June 21, 1988

The Honorable Alex Harvin, III  
The Majority Leader Emeritus  
House of Representatives  
304-C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Harvin:

As you are aware, your letter dated April 8, 1988, to Attorney General Medlock has been referred to me for response. By your letter you have requested an opinion "as to whether there is anything in the state law that would preclude state employees from using the current payroll deduction system if a sufficient number chose to do so for the purpose of purchasing property and casualty insurance."

A public officer or employee is entitled to the amount of compensation fixed and authorized by law for the performance of his duties. 67 C.J.S. Officers and Public Employees §226. This Office has previously opined that:

In the absence of express statutory authority, it is doubtful whether classified State employees could negotiate lower salaries with their employers except in certain situations, such as budget reductions, where appropriate funds may not be available. The General Assembly could, if it so desired, expressly authorize such salary reductions.

S.C. Att'y Gen. Op. #86-57 (May 14, 1986) [A copy is attached for your convenience.].

The Honorable Alex Harvin, III  
Page Two  
June 21, 1988

Statutes relating to the compensation of public officers or employees must be strictly construed in favor of the government, and such officers or employees are entitled only to that which is clearly given. 67 C.J.S. Officers and Public Employees §226(d). Accord State v. Wilder, 198 S.C. 390, 18 S.E. 2d 324 (1941).

As the maxim [expressio unius est exclusio alterius] is applied to statutory interpretation, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions. "When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted. Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions, that mode must be followed and none other, and such parties only may act." [Footnotes omitted.]

Sutherland Stat. Constr. §47.23 (4th ed. 1984). See also Home Bldg. & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938); Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

Sections 8-11-70 (Deduction from pay for United States savings bonds.), 8-11-80 (Deduction for group life, hospital, and other insurance.), 8-11-83 (Payroll deduction for dues of State Employees' Association.), 8-11-90 (Deductions for federal taxes.), 8-11-91 through 8-11-97 (Deductions for charitable contributions.), and 8-11-98 (Deductions for payment to credit union.) expressly authorize specific deductions from the salary or wages of public officers or employees. Except for the deductions for federal taxes, these authorized deductions must be requested or authorized by the public officer or employee. Deductions are also statutorily authorized for members of the South Carolina Retirement Systems. E.g., S.C. Code Ann. §§9-1-1020 and 9-3-510 (1976 & 1984 Supp.). In addition, S.C. Code Ann. §8-23-10 et seq. (1976) establishes a Deferred Compensation Program "to enable employees of the State, its agencies and political subdivisions to participate [by contract,] in voluntary deferred compensation plans authorized by the United States Internal Revenue Code...." By enactment of 1987 S.C. Acts 170, Part II, §18, S.C. Code Ann. §9-1-60 (1976) authorizes the South Carolina Retirement System to implement a "cafeteria" plan.

The Honorable Alex Harvin, III  
Page Three  
June 21, 1988

Section 8-11-80 provides:

The Comptroller General may, upon request of employees of the State, make deductions from the compensation of the 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. The Comptroller General may not make deductions where deductions are made for less than two hundred fifty state employees in any particular plan. The Comptroller General shall pay over to the insurance company, or its agents designated to receive the funds, all amounts so collected or withheld. No part of the cost of the insurance or expenses incidental to the payroll deduction must be borne by the State, nor must any liability whatsoever be incurred by the State in connection with the deduction, nor may the State in any way aid insurance companies in the solicitation of policies by expressly or implicitly endorsing any particular insurance plan or company.  
[Emphasis added.]

Apparently, property and casualty insurance do not constitute "other types of insurance plans as are in force and a member of the deduction system on the effective date of this act" and, therefore, are not governed by §8-11-80.

Section 9-1-60 provides, in relevant part:

(A) The [South Carolina Retirement] System may develop and implement a program for the administration of a flexible benefits or "cafeteria" plan as defined by Section 125 of the Internal Revenue Code of 1986 for all employees covered by the health and dental insurance plan administered by the System. The plan may not decrease contributions paid to or benefits paid by the System.

The South Carolina Department of Highways and Public Transportation is herewith authorized to continue its independent cafeteria or flexible benefits pilot plan and

The Honorable Alex Harvin, III  
Page Four  
June 21, 1988

to modify and implement the plan to  
accomplish maximum available benefits under  
Internal Revenue Section 125. [Emphasis  
added.]

S.C. Code Ann. §9-1-60(A) (1976).<sup>1</sup> According to this language, the South Carolina Retirement System is obviously more limited in developing and implementing the cafeteria plan "for all employees covered by the health and dental insurance plan" than is the South Carolina Department of Highways and Public Transportation in continuing its independent cafeteria plan "to accomplish maximum available benefits under Internal Revenue Section 125." Id. Thus, State employees -- except employees of the South Carolina Department of Highways and Public Transportation -- are limited to a more restrictive cafeteria plan, which does not appear to include property and casualty insurance. Cf. S.C. Att'y Gen. Op., Oct. 7, 1987 (Interpreting S.C. Code Ann. §9-1-60(1976)), this Office opined that "school districts may not create cafeteria plans separate from the one created and administered by the Retirement System.").

Consequently, no statutory authority appears to exist for State employees in general to include property and casualty insurance as a payroll deduction. Absent such statutory authority, it is doubtful whether they could make such payroll deductions. Of course, the General Assembly, if it so desired,

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<sup>1</sup> By 1986 S.C. Acts 540, Part II, §35, the South Carolina General Assembly provided:

The Department of Highways and Public Transportation is authorized to develop and implement a plan for the administration of a "Cafeteria Plan", as defined by Section 125 of the Internal Revenue Code of 1954, for its employees. The South Carolina Retirement System is mandated to cooperate with the department in the implementation of the "Cafeteria Plan".

The Honorable Alex Harvin, III  
Page Five  
June 21, 1988

could expressly authorize by statute payroll deductions for property and casualty insurance.<sup>2</sup> See S.C. Att'y Gen. Op. #86-57 (May 14, 1986).

If I can answer any questions, please do not hesitate to contact me.

Sincerely,

*Samuel L. Wilkins*

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Assistant Attorney General

SLW/fg

APPROVED AND REVIEWED BY:

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<sup>2</sup> Section 125 of the Internal Revenue Code of 1986 would need to be analyzed to determine whether a cafeteria plan would include such a statutory authorization for a payroll deduction for property and casualty insurance.