

1981 WL 158259 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 6, 1981

*1 Honorable Thomas M. Marchant, III
House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Marchant:

This will reply to your letter delivered yesterday afternoon, raising several questions concerning Bill S.153 as adopted yesterday afternoon by the Conference Committee on S.153, H.2040. Because of the time limitations, particularly inability on short notice to obtain copies of charters and bylaws of organizations mentioned by you, the following comments cannot be considered a formal opinion of this Office.

Your letter indicates that under present practices in some school districts, dues are deducted from teachers' paychecks and portions of these dues go to the local education association, the South Carolina Education Association, and the National Education Association. You also advised that the National Association is classified as a labor organization under [Section 501\(c\)\(5\) of the Internal Revenue Code](#). In the light of this information, we will comment on your questions in the order stated.

1. Will these provisions agreed upon by the Conference Committee allow teachers' deductions to these education associations to continue?

It does not appear that the Bill as agreed upon by the Conference Committee yesterday authorizes deductions for any organizations except 'nonprofit, eleemosynary corporation, association or organization which is organized and operated exclusively for charitable, health, or welfare services . . . ' While we do not have the charters of any of the education associations you have mentioned, it would appear difficult that these associations or any other professional association could qualify under this definition. If, as you advised, some school districts are deducting dues for such associations, these deductions are being made without statutory authorization, as indicated in the prior opinions of this Office which were discussed by the Conference Committee yesterday. S.153, as amended, does not authorize such deductions.

We should also comment that the bill prohibits deductions to organizations whose tax exempt status is determined under [Section 501\(c\)\(4\), 501\(c\)\(5\) and 501\(c\)\(6\) of Title 26, United States Code](#) (the Internal Revenue Code of 1954, as amended), as well as other types of organizations not here concerned. According to the information available to us at this time, contributions directly to the South Carolina Education Association and the National Education Association would be prohibited by these provisions. Subsection (6) in the second paragraph of Section 1 of S.153 also prohibits deductions for contributions to organizations which have a parent organization or subsidiary organization which fails to qualify under the provisions of the bill. This would appear to prevent a deduction for contributions to local professional associations whose parent organizations are not qualified under the proposed act.

2. Would these provisions allow other school districts to begin such deductions?

*2 The proposed act provides only for specific charitable deductions under the provisions of Section 1 and for certain deductions for payments to credit unions under Section 3. Any other deductions allowed by school districts would be without statutory authority.

3. Could local organizations, the S.C.E.A. and N.E.A. either define or redefine their statuses so that they are not in 'parent' or 'subsidiary' relationships and thereby receive payroll deductions despite the provisions and intent of Section 8-11-92(6) in S.153?

Of course any organization may amend its charter and bylaws by following appropriate statutory procedures and might thereby become eligible for payroll deductions by meeting the qualifications of the proposed act. This would appear, however, to require a complete change in the purpose and functions of such organizations as they would have to be operated 'exclusively' for charitable, health, or welfare services to the public. Such a change in purpose and functions would obviously prevent these organizations from performing any of the essential purposes for which they are now organized, and they would lose the characteristics of a professional association and clearly would lose all characteristics of a labor union organization.

As we understand it, your ultimate question is whether the refusal of the Conference Committee to include Section 1A of H.2040 may nevertheless permit an eligible organization to pass along 'any of the proceeds of the deduction' . . . 'for the benefit of any such organization.' It would appear that an eligible organization might make some payment or contribution to an ineligible organization. For example, a local health organization such as a chapter of the American Cancer Society might make a dues payment or contribution to some other organization which is not eligible; but this would render the local organization ineligible only if its contributions or payments to other organizations reached such proportions that the Secretary of State would determine (under paragraph B, Section 1 of the proposed act) that the local organization was no longer 'operated exclusively for charitable, health, or welfare services'

In short, no absolute prohibition against payments by eligible organizations to ineligible organizations can be effected unless the statute so provides, but it appears that substantial contributions of this kind might endanger the local organizations eligibility to receive payroll deductions under the act.

Sincerely,

Frank K. Sloan
Deputy Attorney General

ATTACHMENT

A BILL

To Amend the Code of Laws of South Carolina, 1976, by Adding Sections 8-11-91, 8-11-92, 8-11-93, 8-11-94, 8-11-95, 8-11-96 and 8-11-97, so as to Authorize Deduction from the Salary or Wages of State Officers and Employees for Contributions to Qualifying Public Charities; to Provide Qualifying Criteria for Such Charities and to Direct the Secretary of State to Determine the Specific Charities Which Qualify; to Make as a Prerequisite a Minimum Level of Employee Participation; to Make Confidential the Names of Contributors and the Individual Amounts; to Provide for the Control of Solicitation Drives and the Minimizing of Administrative Overhead; to Require Qualifying Organizations to Make Business Records Available for Verification of Their Status; and to Authorize Promulgation of Appropriate Regulations; to Further Amend the 1976 Code by Adding Section 8-11-81, so as to Authorize Payroll Deductions by State Officers and Employees of Payments to Credit Unions, Banks and Savings and Loan Associations, and to Authorize Promulgation of Appropriate Regulations. Amend title to conform.

***3** Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The 1976 Code is amended by adding:

'Section 8-11-91. The Comptroller General shall, upon written authorization by any officer or employee, deduct from the salary or wages of any such officer or employee contributions to be paid over to eligible nonprofit charitable organizations, or groups of such organizations, in the manner prescribed by Sections 8-11-92 through 8-11-97. Chief finance officers of state agencies and institutions maintaining payroll accounts separate from the office of the Comptroller General likewise shall make deductions from the salaries and wages of their officers and employees for such contributions.'

Section 8-11-92. A. Nonprofit charitable organizations for which such payroll deductions may be made shall include any nonprofit, eleemosynary corporation, association or organization which is organized and operated exclusively for charitable, health, or welfare services to the public and meets all of the following qualifications:

(1) Is and continues to be organized and qualified to solicit and operate under the laws of this State, pursuant to Chapter 55 of Title 33, and has been for one year;

(2) Provide direct and continuing services to or on behalf of the citizens of the State. For purposes of this section, 'direct and continuing services' means: (a) services other than legal advocacy services which are provided directly to and specifically for one individual or one family; or, (b) services which are in the nature of medical research; or, (c) services which involve the collection and administration of funds by umbrella organizations for other organizations, all of which qualify under this act;

(3) Is recognized as tax exempt under [Section 501\(c\)\(3\) of Title 26, United States Code](#) (the Internal Revenue Code of 1954, as amended);

(4) Is not an organization contemplated by [Section 501\(c\)\(4\)](#), [501\(c\)\(5\)](#), or [501\(c\)\(6\) of Title 26, United States Code](#) (the Internal Revenue Code of 1954, as amended) and is not an organization primarily engaged in the propagation of a religious faith or belief; this prohibition shall include, but not be limited to, organizations primarily engaged in lobbying or political activity;

(5) Is operated without discrimination in regard to all persons served, and complies with all requirements of law, including administrative regulations, respecting non-discrimination and equal opportunity regarding its officers, staff, employees and volunteers;

(6) Has neither a parent organization nor a subsidiary organization which fails to meet qualifications herein contained in items (1) through (5).

B. The Secretary of State shall determine on an annual basis, based upon the applications of nonprofit, charitable organizations and groups of such organizations, those which are eligible to participate in payroll deductions for state-employee contributions. His decision shall be final unless determined by a court of competent jurisdiction to be arbitrary, capricious or unsupported by any credible evidence.

***4** Section 8-11-93. Because of the high cost to be borne by the State in providing administrative services regarding payroll deductions for contributions to charitable organizations, even though an organization may be eligible under Section 8-11-92 no such deductions shall be authorized by the Comptroller General, or by the chief finance officer of a state agency or institution maintaining separate payroll accounts, unless at least ten percent of the employees or two hundred employees, whichever shall be the lesser, who are paid from such payroll account, have made a written authorization to deduct contributions to an eligible charitable organization or group of such organizations.

Section 8-11-94. The names of state employees authorizing deductions of charitable contributions and the amount of the individual contributions shall be confidential and shall not be made public. This prohibition against disclosure shall not bar the Secretary of State State Auditor or state or federal tax authorities from access to all information necessary to verify or establish the eligibility, the tax exempt status or the tax liability of such organizations or groups of such organizations. The tax returns and books and records of such organizations or groups of such organizations shall be made available at all times necessary to determine the status and eligibility of any such charitable organization or groups of such organizations.

Section 8-11-95. The Comptroller General, and the chief finance officers of state agencies and institutions maintaining separate payroll accounts, shall permit two time periods during any calendar year for general charitable-solicitation drives within state offices, agencies and institutions.

Section 8-11-96. Authorization for payroll deductions for charitable contributions may be made or terminated at any payroll period by the officer or employee concerned; *provided*, that either the Comptroller General or the chief finance officer concerned may require that deductions be made pro rata from each payroll check or in such other manner as will reduce to a minimum both the cost of handling such deductions and any interference with regular payroll procedures.

Section 8-11-97. The Comptroller General, and the chief finance officers concerned, shall promulgate regulations necessary and expedient to accomplishing the purposes of Sections 8-11-91 through 8-11-96.'

SECTION 2. If any portion of this act is held unconstitutional or otherwise unenforceable, such portion shall be deemed severable and the remainder shall continue in full force and effect.

A BILL

To Amend the Code of Laws of South Carolina, 1976, by Adding Sections 8-11-91, 8-11-92, 8-11-93, 8-11-94, 8-11-95, 8-11-96 and 8-11-97, so as to Authorize Deduction from the Salary or Wages of State Officers and Employees for Contributions to Qualifying Public Charities; to Provide Qualifying Criteria for Such Charities and to Direct the Secretary of State to Determine the Specific Charities Which Qualify; to Make as a Prerequisite a Minimum Level of Employee Participation; to Make Confidential the Names of Contributors and the Individual Amounts; to provide for the Control of Solicitation Drives and the Minimizing of Administrative Overhead; to Require Qualifying Organizations to Make Business Records Available for Verification of Their Status; and to Authorize Promulgation of Appropriate Regulations; to Further Amend the 1976 Code by Adding Section 8-11-81, so as to Authorize Payroll Deductions by State Officers and Employees of Payments to Credit Unions, Banks and Savings and Loan Associations, and to Authorize Promulgation of Appropriate Regulations. Amend title to conform.

*5 Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The 1976 Code is amended by adding:

'Section 8-11-95. A. (1) For purposes of this section 'United Way' means those local organizations (a) which conduct the single, annual, consolidated effort to secure funds for distribution to a broad variety of agencies and organizations engaged in providing health and welfare services and recognized as tax exempt under [Section 501-C-3](#) of Title 26, United States Code Annotated (the Internal Revenue Code of 1954); (b) which conduct a year-round review of the management and services effectiveness of participating agencies; (c) which have proven records of efficient fund raising and low administrative costs; (d) which are commonly known as 'The United Way' or 'United Fund'.

(2) For purposes of this section the 'Good Health Appeal' is a single, consolidated effort to secure funds from employees of the State for those national health agencies which are tax exempt under Section 501-C-3, United States Code Annotated (the Internal Revenue Code of 1954), not a part of the United Way, and which are engaged in research, direct patient services and health education providing services to citizens throughout the State and which effort has a proven record of efficient fund raising and low administrative costs.

B. The Comptroller General or any official of a political subdivision of the State which is authorized to disburse funds in payment of salaries or wages of public officers or employees shall, upon written authorization, deduct from the salary or wages of such officer or employee the amounts authorized for payment of the United Way or Good Health Appeal. The monies deducted shall be paid promptly to the designated organization.

Employees shall be allowed to designate gifts through the United Way or Good Health Appeal to any health and welfare agency or organization classified as tax exempt under Section 501-C-3 of the Internal Revenue Service Code of 1954, duly registered with the State of South Carolina, and providing direct and continuing service to or on behalf of the citizens of the State, whether or not such organizations are members of the United Way or Good Health Appeal.

Subject to any regulations prescribed by the Budget and Control Board, the Comptroller General may prescribe any procedures necessary to carry out the provisions of this section.'

SECTION 1A. Notwithstanding any other provision of this act, including definitions of organizations eligible for payroll deductions, such provisions shall not be construed to include any organization recognized or classified as a labor organization under [Section 501\(c\)\(5\) of Title 26 of the United States Code Annotated](#), by the United States Department of Labor, or by any court of competent jurisdiction nor shall any such deduction be made if any of the proceeds of the deduction would be for the benefit of any such organization.

SECTION 2. (The governing body of any school district may) provide for the withholding from the compensation of any employee such sums as may be authorized by the employee for payment to tax exempt charitable organizations registered in State of South Carolina, and providing direct services to the citizens of this State, and to credit unions,

***6** SECTION 3. The 1976 Code is amended by adding:

'Section 8-11-98. The Comptroller General or any official of a political subdivision of the State which is authorized to disburse funds in payment of salaries or wages of public officers or employees shall, upon written authorization, deduct from the salary or wages of such officer or employee the amounts authorized for payment to any lawfully chartered credit union The monies deducted shall be paid promptly to the designated organization.

Subject to any regulations prescribed by the Budget and Control Board, the Comptroller General may prescribe any procedures necessary to carry out the provisions of this section.'

SECTION 4. This act shall take effect upon approval by the Governor.

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