

1981 WL 157801 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 1, 1981

*1 Honorable Hyman Rubin
South Carolina Senate
The State House
Columbia, South Carolina

Dear Senator Rubin:

This will reply to your request for this Office's opinion concerning Bill S.153 as adopted by the Senate-House Conference Committee on S.153, H.2040.

I. We are informed 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. We are also advised that the National Association is classified as a labor organization under [Section 501\(c\)\(5\) of the Internal Revenue Code](#).

The question is whether the Bill agreed upon by the Conference Committee would allow teachers' deductions to these education associations to continue?

It does not appear that the Bill as agreed upon by the Conference Committee authorizes deductions for any organizations except 'non-profit, 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 mentioned, it would appear difficult that these associations or any other professional association could qualify under the definition of organizations eligible for payroll deductions as provided in the Bill. 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. S.153, as amended, does not authorize such deductions.

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 therein mentioned. 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 prohibit deductions for contributions to local professional associations whose parent organizations are not qualified under the proposed act.

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, except for unrelated items such as taxes, etc.

II. We have also been asked whether professional organizations such as a teachers' association, the SCEA or the NEA might alter their statuses so that they are not in 'parent' or 'subsidiary' relationships and thereby become eligible to receive payroll deductions despite the provisions and intent of Section 8-11-92(6) in S.153.

*2 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, however, 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. They would lose the characteristics of a professional association and clearly would lose all characteristics of a labor union organization.

III. As we understand it, the 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 (ineligible) organization.' It is, of course, possible 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 should determine (under paragraph B, Section 1 of the Bill) that the local organization was no longer 'operated exclusively for charitable, health, or welfare services. . . .'

It is the opinion of this Office that an attempt by statute to prohibit absolutely any payment by an eligible charitable organization to an 'ineligible' organization would create severe legal problems. It might raise constitutional due process and equal protection questions, and would certainly conflict with other lawful rights and privileges of charitable groups organized under the laws of this State.

Sincerely,

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Deputy Attorney General

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