

1974 S.C. Op. Atty. Gen. 307 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3879, 1974 WL 21377

Office of the Attorney General

State of South Carolina

Opinion No. 3879

November 1, 1974

**It is not mandatory for a school district to enter into an agreement to withhold from employees compensation for the purchase of annuity contracts for such employees and if the district did elect to withhold it can attach reasonable conditions therefor.**

**\*1** Business Manager  
Abbeville County School District

Reference is made to your request for the opinion of this office concerning the withholding from compensation of the employees for the purchase of annuity contracts for such employees. The authority for the withholding was provided for in a 1972 Act, now codified as Section 61-441 and 61-442. Section 61-441 provides as follows:

‘The various school districts of this State and State-supported institutions of higher learning are authorized to enter into agreements to pay, at the request of their employees, a part of the incomes of such employees, not to exceed the exclusion allowance provided in [Section 403\(b\)\(2\) of the Internal Revenue Code](#) of the United States, for the purchase of annuity or other contracts which meet the requirements of [Section 403\(b\) of the Internal Revenue Code](#).’

You advise that you are at present making payroll deductions for annuities for seven different companies and ask the opinion of this office as to the legal requirements of the district thereon. You further advise that the large number makes the withholding troublesome and time consuming to the payroll department and ask if the same may be limited to one company. The words of the above statute are to be given their ordinary and popular significance.

‘Words used in statute should be taken in their ordinary and popular significance, unless there is something in the statute requiring different interpretation.’ *Martin v. Nationwide Mut. Ins. Co.*, 256 S. C. 577, 183 S. E. 2d 451. (For other cases, see 17 S.C.D., Statutes, Key 188).

The statute quoted above ‘authorizes’ the district to enter into the agreement at the request of the employees. Authorized is defined as ‘possessed of, or endowed with, authority. Sanctioned or approved by authority.’ *Webster’s New Collegiate Dictionary*. The same authority defines authorize to mean ‘to clothe with authority or legal power; as to commission; as authorized agents. To empower; permit, as, authorize him to act. \* \* \*.’

While we find no judicial declaration of the meaning of the term rendered by the courts of this State, the word has been defined in other jurisdictions. The United States Eighth Circuit Court of Appeals, in the case of *Shopen v. Bone*, 328 F. 2d 655 at page 659, stated:

‘It would place a strained construction on the parties’ use of the word ‘authorize,’ which ordinarily denotes a power to act as opposed to an obligation to act. \* \* \*.’

The Supreme Court of Appeals of Virginia, in the case of *Griffin v. Board of Sup’vr of Prince Edward County*, 203 Va. 321, 124 S. E. 2d 227, stated:

‘The word ‘is authorized’ denotes a grant of power and discretion to act, but not a command or requirement to act.’

\*2 It is therefore not mandatory for the school district to enter into the agreement and it would appear that if the district did elect to enter into the agreement, it could provide reasonable conditions therefor. Such power is further specifically conferred by Sections 21–230.2 and 21–230. The next inquiry, however, is whether the district may, after having entered into the agreements, limit the annuities available or cause the cancellation of existing contracts. The resolve of this question is dependent upon the terms and conditions of the contract between the district and the employee; in example, if the contract for employment is for a twelve months' period, then the withholding by the district is a proper subject to be considered in new contractual negotiations. It is, however, doubtful that the district could unilaterally discontinue an existing agreement entered into at the beginning or during the employees' contract year.

If there is need to eliminate the increasing burden to the district caused by the withholding, it is suggested that reasonable conditions for the agreement to withhold be established and that present agreements be considered in new contractual discussions.

Joe L. Allen, Jr.  
Assistant Attorney General

1974 S.C. Op. Atty. Gen. 307 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3879, 1974 WL 21377

---

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.