OFFICIAL OPINION No. 109

November 9, 1949.

Mr. R. C. Olson
Asst. Comm. of Labor
225 State House
Indianapolis 4, Indiana

Dear Sir:

We have your recent letter in which you request an official opinion of the following:

> "This department has been asked on numerous occasions as to the question of the check-off of union dues, by plants engaged in Interstate Commerce as it is affected by State and Federal Law.
>
> "In other words, does the Taft-Hartley Law supersede the state law in respect to check-off of union dues and initiation fees. Wherein the section of the Taft-Hartley Law is as follows: Sec. 302, (c), (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization; Provided, that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; and Sec. 14, (b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law.
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> "At this time, an official opinion is urgently requested because now such a question is being instrumental in creating labor disbutes and may eventually cause plant shutdowns."

Section 40-208, Volume 8, Burns' 1947 Pocket Supplement, Acts of 1945, Volume 2, Chapter 250, Section 1, page 1125 is as follows:

"No assignment of his wages or salary by a married man, who shall be living with his wife and shall be the head of a family, residing in this state, to any wage broker, or any other person, for his benefit, shall be valid or enforceable without the consent of his wife, evidenced by her signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments of conveyances, and no wage broker or person connected with him directly or indirectly shall be authorized to take any such acknowledgment.

"Provided that this act shall not apply to any deduction from the wages or salary of any employee of such employer, which deduction is made for the purpose of applying the same to any account of such employee in any credit union or any nonprofit organization of employees or such employer organized under any law of this state or of the United States."

Section 40-213, Volume 8, Burns' 1947 Pocket Supplement, Act of 1945, Chapter 183, Section 1, page 452 provides:

"Any direction hereafter given by an employee to his or her employer to made (make) a deduction from the wages to be earned by said employee, after said direction is given, shall constitute an assignment of the wages of said employee."

Section 40-214, Volume 8, Burns' 1947 Pocket Supplement, Volume 11, Acts of 1947, Chapter 330, Section 1, Page 1319, recites in part as follows:

"Any assignment of the wages of an employee hereafter made shall not be valid unless:

"(a) It is in writing and signed by the employee personally, and is, by its terms revocable at any time by the employee upon written notice to the employer, and such assignment is agreed to in writing by the employer.

"(b) An executed copy thereof is delivered to the employer within ten (10) days after its execution.

"c) It is made for the purpose of paying the:

"* * *.

"(5) Dues to become owing by the employee to a labor organization of which he or she is a member."

Your attention is directed as to what constitutes an assignment of wages as the same is defined in Section 40-213, Volume 8, Burns' 1947 Pocket Supplement *(supra)*.

Section 302 (a, b and c 4) Labor Management Relations Act 1947, Public Law 101, 80th Congress, 1st session, Chapter 120 and commonly known as the Taft-Hartley Law in part is as follows:

"Sec. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable * * *.

"(4) With respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement whichever occurs sooner; * * *."

In Cleveland, Cincinnati, Chicago and St. Louis Railway Company *et al.* v. Marshall, 182 Ind. 280 at page 283, the court said in discussing Section 4, Chapter 34, of the Acts of 1909 and amended by Chapter 250, of the Acts of 1945 *(supra)*.

"Appellee, in commencing this action relied on § 4, of an act relating to the assignment of wages ap-

proved February 27, 1909 (Acts of 1909, p. 76, § 7999, Burns' 1914), and reading as follows: 'Sec. 4. No assignment of his wages or salary by a married man, who shall be the head of a family residing in this State, shall be valid or enforceable without the consent of his wife, evidenced by her signature to said assignment executed and acknowledged before a notary public or other officer empowered to take acknowledgments of conveyances, and no wage broker or person connected with him directly or indirectly shall be authorized to take any such acknowledgments.' Appellants contend that the provisions of said act of 1909 apply only to wage brokers—a class to which appellant partnership does not belong. While the provisions of §§ 2 and 3 of the Act (Acts 1909, p. 76, 7997, 7998, Burns' 1914), are so limited, we are of the opinion the § 4 *supra,* clearly manifests an intent to prohibit assignments of wages, whether earned or to be earned, by a married man who is a resident householder of this State, to any person, regardless of occupation * * *.

"While statutes of this character are subject to the rule of strict construction, because in derogation of common-law rights, such rule can have no application, where, as here, the legislative intent is free from doubt. Where the language of a statutory provision is plain, there is no room for construction."

Cheney v. State *ex rel.* (1905), 165 Ind. 121, 125, N. E. 892, and authorities cited;
Cleveland, etc. R. R. Co. v. Marshall, *supra;*
Wood v. State, 188 Ind. 606;
Section 1-201, Burns' 1933 Ind. Stat., Volume 2, Part 1, 1946 Replacement;
1937 Ind. O.A.G., page 175.

As to the further question of how companies engaged in interstate commerce are affected by the wage assignment law *(supra)* the Supreme Court of the State of Indiana in deciding the case of Cleveland, etc. R. R. Co. v. Marshall, *supra* at page 288 said:

"It is further contended that appellee was engaged in interstate commerce and that the railway company,

> in discharging its duties as an interstate carrier, may properly require all of its employees the carrying of inspected watches; that this legislation tends to hinder interstate commerce and is consequently invalid. The most important feature of the domestic relations law, is that of husband and wife. The law of that relation, is exclusively for the states, no power thereover having been delegated to Congress by the Federal Constitution."
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> Cooley, Const. Lim. (5th ed.) 708.

I am of the opinion that there is no conflict between Section 302 (a, b and c 4) Labor-Management Relations Act *(supra)* and the wage assignment laws *(supra)*. Therefore, regardless of whether the employer is engaged in Interstate Commerce, before there could be a valid assignment for labor dues there must be a proper assignment as required by Section 40-208 *(supra)*.

JAW:man

OFFICIAL OPINION NO. 110

November 9, 1949.

Indiana Real Estate Commission
1028 North Meridian
Indianapolis, Indiana

ATTENTION: Mr. Robert M. Reel

Dear Sir:

I have your letter of October 24, 1949, in which you propound certain questions on which you desire an Official Opinion. Your questions are as follows:

> "1) That it is general practice for the oil company to negotiate its own leases with real estate owners in oil territories.
>
> "2) That a few independent operators do go into an oil field and negotiate leases with real estate owners for the oil companies being paid a commission of so much an acre or on some other agreed basis."