

**COMMISSIONER OF LABOR: Assignment of Wages—Contract.** Contract of employment to be responsible for employer's tools is not assignment of wages. Enforceable contract—cannot deduct from wages over employee's objection.

August 28, 1944.

*Opinion No. 82*

Hon. Thomas R. Hutson,  
Commissioner of Labor,  
225 State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of August 16, 1944, received as follows:

"We would like an opinion on the assignment of wages, in cases where the employer allows his employees to use company owned tools to perform work at his regular job, as to whether the company can make deductions of the employee's pay when such tool is lost or abused.

"At the time the employee obtains the tool from the tool crib he must sign a form which is made in triplicate, the original and third copy being retained by the tool crib tender and the duplicate being retained by the employee. On this form is printed the following: 'Notice—You are responsible for the above articles. If they are lost or abused they will be charged to you.' The form is then signed by the employee. Is there any other authorization for deduction from pay necessary before such deduction can be made for any lost or abused article?"

Sec. 40-201, Burns' (1933), same being Sec. 4, Ch. 124, Acts of 1899, provides as follows:

"The assignment of future wages, to become due to employees from persons, companies, corporations or associations affected by this act, is hereby prohibited, nor shall any agreement be valid that relieves said persons, companies, corporations or associations from the obligation to pay weekly, the full amount due, or to become due, to any employee in accordance with the provisions

of this act. Provided, That nothing in this act shall be construed to prevent employers advancing money to their employees."

In an official opinion of this office given you under date of March 20, 1943, found in 1943 O. A. G. (p. 126), it was held a provision providing for the so-called "check-off" system of dues to a union, inserted in a contract between the employer and the union, did not constitute an assignment of wages under the Indiana statutes. After reviewing the authorities, said opinion, on page 129, states the rule to be:

"An assignment imports a transfer of an interest in property, tangible or intangible, in being at the time of the assignment or to come into being thereafter. The assignor has no power to revoke it. But under a direction, authorization or mere order with implied or express power to revoke, the owner can revoke his act at any time he pleases, and therefore his act does not constitute an assignment."

The placing of such tools in the custody of the employee, under the conditions set forth in your letter, would not constitute an assignment of wages under the Indiana statutes.

An examination of the agreements signed by the employee when he secures these tools, under the form set forth in your letter, does not state that in case the tools are lost or abused any moneys are to be retained from the employees' pay, but only provides "they will be charged" to the employee.

I do not find that the making of such a contract between employer and employee violates any state law, and the same would, therefore, be valid and enforceable.

However, your letter also raises the additional questions: (1) Can the company make deductions from the employee's pay when such tool is lost or abused? (2) Is there any authorization for deduction from pay necessary before such deduction can be made for any lost or abused article?

It is my opinion that when such tools are lost or abused by the employee, while in his possession under such an agreement, the employer thereupon may assert his claim under such contract, which is in the nature of a "set-off." If the employee acquiesces, at the time of the payment to him of his wages, in the retention by the employer of the amount of such

loss, the same would constitute a satisfaction of the employer's claim against the employee. In that event the employee could not thereafter object to such retention by the employer while he retains the benefit of the satisfaction of such employer's claim against him.

Wells v. Vandalia Railroad Co. (1913), 56 Ind. App. 211 at 216, 217.

However, I am of the further opinion that if the employee demands the payment of his wages in full under Sec. 40-201, Burns' (1933), he may require such payment, leaving the employer to enforce his claim under the contract by due process of law.

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**STATE BOARD OF ACCOUNTS. AVIATION: City may include sum in budget for aviation notwithstanding it also has five cent special levy. Application of general levy limit.**

August 30, 1944.

*Opinion No. 83*

Hon. Otto K. Jensen, State Examiner,  
Department of Inspection and Supervision  
of Public Offices,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your letter of August 22nd in which you submit the following question:

"The City of Bloomington in its budget estimates and notice of proposed tax rates for the year 1945 has included a rate of five cents on each one hundred dollars of assessed valuation for aviation purposes. In addition thereto there is included in the general fund budget an estimate for appropriation for a transfer from the general fund to the aviation fund.

"The question is presented as to whether the inclusion in the general fund budget of a sum for transfer