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In summary, it is my Official Opinion that a Justice of the Peace who has jurisdiction of the original action may, in a proceeding supplemental to execution, gain jurisdiction over an employer-garnishee defendant in another county by sending interrogatories and orders to answer to him by registered mail.

OFFICIAL OPINION NO. 60

October 29, 1965

Hon. Marlin K. McDaniel
Indiana State Senator
Peoples Savings Bank
Richmond, Indiana

Dear Senator McDaniel:

This answers your recent request for an Official Opinion "as to whether schools in Wayne County and Union County, Indiana, may make payroll deductions payable to the United Fund of Wayne County, Inc., an affiliated United Fund organization."

A very similar question was answered by Attorney General Emmert in 1946. 1946 O.A.G., p. 100, No. 31. There the question was whether cities could honor wage assignments of their employees for the Blue Cross Hospital Plan. The opinion reasoned that the power of the municipal corporation to deduct and pay premiums to Blue Cross was incidental to the express power granted by statute to hire employees and pay wages.

Assuming that there are schools in Wayne and Union Counties operated by school corporations, other than township trustees, their powers are set forth in Ind. Acts of 1965, ch. 307, §§ 201 and 202, Burns IND. STAT. ANN., (1965 Cum. Supp.), §§ 28-6409 and 28-6410. While these statutes do not expressly authorize payroll deductions for any purpose, clause (6) of § 28-6410 authorizes employment of teachers, bus drivers, and a long list of others, and authorizes the fixing and payment of compensation. Clause (19) of the same section authorizes "exercise [of] any other powers . . . which is reasonable from a business or educational standpoint . . .

and the specific powers . . . shall not be construed to limit the general grant of powers . . . except where a limitation is set out . . . by specific language. . . .”

Under the reasoning of the quoted 1946 O.A.G., which I find to be sound, school corporations certainly have implied or incidental power, in the absence of any specific statutory prohibition to permit payroll deductions.

Township trustees are empowered in very general terms by Ind. Acts of 1899, ch. 192, § 1, as amended by Ind. Acts of 1901, ch. 224, § 1, Burns IND. STAT. ANN., § 28-2410, to operate schools, including the mandate that: “They shall employ teachers, . . . [etc.]” There would seem to be no question of their implied and incidental power to pay wages and salaries in any lawful manner, including payment of a part thereof to a charity when duly authorized by an employee.

Chapter 183, Ind. Acts of 1945, defines “wage assignments” as any direction given by an employee to his employer to make a deduction from wages to be earned in the future. Section 2 of the Act (Burns IND. STAT. ANN., § 40-214) prohibits all wage assignments not made in conformity with that section. The above-quoted 1946 O.A.G. questioned whether the State and its political subdivisions were employers within the meaning of that act, but concluded that the question was not controlling, the deduction being authorized in either event.

In 1949, the Attorney General issued an Official Opinion that the State, including its subdivisions, was not an employer within the meaning of that act, 1949 O.A.G., p. 286, No. 75. But the 1965 regular session of the General Assembly, by ch. 301, Ind. Acts of 1965, § 1, Burns IND. STAT. ANN., (1965 Supp.), § 40-213, amended the act to expressly include the State and its political subdivisions within the meaning of “employer” as used in the act. School corporations are political subdivisions of the State of Indiana. *State ex rel. Osborn v. Eddington*, 208 Ind. 160, 195 N.E. 92 (1935); *Stone v. State ex rel. Bossong*, 208 Ind. 65, 194 N.E. 642 (1935).

Under the restrictions imposed by Burns IND. STAT. ANN., § 40-214, a wage deduction under Burns § 40-214 is

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not valid unless the employee has personally signed a revocable wage assignment which is delivered to the employer within ten days and is agreed to in writing by the employer. It must also be for a purpose authorized by the act which, among other things, includes a pledge or contribution to a charitable or nonprofit organization. Since United Funds generally are known to be both charitable organizations and nonprofit organizations, there appears to be no reason that schools in Wayne County and Union County cannot make payroll deductions payable to the United Fund of Wayne County, Inc., provided the employee executes a written wage assignment which is filed and approved in conformity with the requirements of the above-cited statute.

OFFICIAL OPINION NO. 61

November 1, 1965

Mr. Richard L. Worley
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Worley:

This is in reply to your letter of September 20, 1965, which reads as follows:

“According to Chapter 187, Acts of 1965 (Burns 53-141), when any public work or improvement of any character is proposed to be constructed by certain municipalities and the governing body thereof determines by a two thirds vote at an official meeting that it is expedient and in the best public interest to employ professional engineering, architectural, or accounting services for the planning and financing of such public work and the preparation of plans and specifications therefor, then the limitations and restrictions in the general law with respect to the invalidity of contracts without an available appropriation therefor, shall not apply to contracts for such professional services.