



ALAN WILSON  
ATTORNEY GENERAL

January 18, 2011

Darrel W. Staat, President  
South Carolina Technical College System  
111 Executive Center Drive  
Columbia, South Carolina 29210

Dear Mr. Staat:

We received your request for an opinion of this Office concerning "payroll withholdings for deductions other than the standard deductions currently provided for within current legislation." In your letter, you provided the following information:

At present, our System Office, state agency H-59, payroll is processed through the Office of The Comptroller General and our withholdings/deductions guidelines are governed by their policies/procedures. However, the SC Technical College System's sixteen Technical Colleges do not process their payroll through the Comptroller General and several of the colleges have requested implementation for additional, optional payroll withholdings as requested by employees. The SC Technical Colleges operate within the policies of the state, but since their payroll is not processed through The Office of the Comptroller General, we are seeking clarity on this issue.

#### **Law/Analysis**

The Legislature created South Carolina's Technical College System through the enactment of the provisions contained in chapter 53 of title 59. These provisions include statutes creating the State Board for Technical and Comprehensive Education as well as individual state-supported technical institutions and the area commissions that govern those institutions. Therefore, we recognize individual technical colleges as creatures of statute. Our Supreme Court concluded on numerous occasions that creatures of statute only possess "those powers which are specifically delineated" by the Legislature. City of Columbia v. Board of Health and Environmental Control, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987). See also, Lexington Law Firm v. South Carolina Dept. of Consumer Affairs, 382 S.C. 580, 585, 677 S.E.2d 591, 594 (2009); S.C. Coastal

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Conservation League v. South Carolina Dep't of Health and Envtl. Control, 363 S.C. 67, 74, 610 S.E.2d 482, 485 (2005). Accordingly, the Legislature must provide technical colleges with the authority to make deductions from their employees' wages.

This conclusion is further supported by several prior opinions issued by this Office. This Office has not dealt specifically with state-supported technical colleges making deductions from their employees' wages. However, in several opinions, this Office concluded that various State agencies and political subdivisions must have specific authority to take deductions from State employee wages. In a 1979 opinion, we addressed whether or not school districts may take deductions from employee wages for the purposes of "paying association dues, union dues, charitable contributions, credit union payments, etc., on behalf of the employee." Op. S.C. Atty. Gen., June 27, 1979. We stated:

The General Assembly has authorized by statute certain deductions from the salaries of public employees. See §§ 8-11-79, 8-11-80, 8-11-90, 9-1-1020, 9-3-510, 9-15-10, Code, supra. With regard to the School District of Greenville County, the General Assembly has enacted statutes permitting the District to make payroll deductions for annuity contracts and insurance contracts for the benefit of its employees. Act No. 906, 1968 Acts and Joint Resolutions; Act No. 994, 1970 Acts and Joint Resolutions. However, no specific authorization was found relating to the deductions noted in your question, and it does not appear that the authorization can be implied by necessity from the general powers of school districts. §§ 59-19-10 et seq., Code, supra.

Id. We came to a similar conclusion in an opinion issued in 1981 when we found the Department of Mental Health was not statutorily authorized to may payroll deductions for State Employee Association dues. Op. S.C. Atty. Gen., August 19, 1981.

In 1980, we addressed whether the Comptroller General may take deductions from State employee wages for contributions to a particular charity. Op. S.C. Atty. Gen., August 29, 1980. We noted that although State Personnel Regulations allow solicitations by charitable organizations, these regulations do not "include authorization for deduction of contributions from the State employees' payroll, which may be permitted only by statute." Id. In numerous other opinions, this Office similarly concluded that payroll deductions require statutory authorization. See Op. S.C. Atty. Gen. June 27, 2002 (finding a public service district could not make deductions from employees' wages for association membership dues because such a deduction was not authorized by statute); June 21, 1988 (determining that payroll deductions for property and casualty insurance are not permitted

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because no statutory authority exists); January 4, 1982 (concluding that payroll deductions for Individual Retirement Accounts are not permitted due to lack of statutory authorization). Accordingly, to answer your question, we do not believe that deductions can be taken from a State employee's wages absent express authorization by the Legislature.

According to section 59-53-20 of the South Carolina Code (2004),

[a]ll personnel employed in the institutions and programs within the jurisdiction and control of the State Board for Technical and Comprehensive Education are designated state employees whether paid in whole or in part by state funds and are subject to the regulations, guidelines, and policies of the State Board for Technical and Comprehensive Education, the Budget and Control Board, and the state personnel system.

This provision establishes that, like the employees discussed in our prior opinions, employees of state-supported technical colleges are State employees. Therefore, we are of the opinion that the Legislature must authorize any deductions taken from their pay.

As you mentioned in your letter, several sections in the South Carolina Code discuss various deductions that the Comptroller General is authorized to make from the salaries of public officers and employees. These provisions are located in chapter 11 of title 8 of the South Carolina Code. Section 8-11-33 of the South Carolina Code (Supp. 2009) permits the Comptroller General to withhold from a State employee's wages if the State is required to by federal law or in the case of an overpayment. This provision specifies that it applies to payroll processed by the Office of the Comptroller General. In your letter, you indicated that the technical colleges process their own payroll. Therefore, we believe that this provision would not apply to technical colleges.

Section 8-11-80 of the South Carolina Code (1986) allows the Comptroller General to make deductions from State employees' wages for group life, hospital, and other insurance. While this provision refers to the Comptroller General as having the authority to make these deductions, in a 1981 opinion, this Office interpreted section 8-11-80 as authorizing State employees of agencies that process their own payroll to make these deductions as well. Op. S.C. Atty. Gen., November 4, 1981. Therefore, we believe technical colleges have authority to make deductions from their employees' pay for group life, health, and other insurance as specified under section 8-11-80.

Section 8-11-83 of the South Carolina Code addresses deductions for State Employees' Association dues. This provision states that not only is the Comptroller General authorized, but "all other state agencies," may make deductions on behalf of their employees to pay membership dues

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for the South Carolina State Employees' Association, presuming that the employee requests such a deduction. S.C. Code Ann. § 8-11-83. We believe this provision allows technical colleges to take these deductions.

Section 8-11-90 of the South Carolina Code (1986) allows the Comptroller General, "or any state department, institution, or agency of the state" to make deductions from employees' pay for federal taxes. Therefore, this provision allows technical colleges to make deductions for federal taxes.

Section 8-11-91 of the South Carolina Code (1986) permits deductions for charitable contributions. This provision states:

The Comptroller General shall, and the governing body of any school district may, upon written authorization by any officer or employee, deduct from the salary or wages of any such officer or employee contributions to be paid over to eligible nonprofit charitable organizations, or groups of such organizations, in the manner prescribed by §§ 8-11-92 through 8-11-97. Chief finance officers of state agencies and institutions maintaining payroll accounts separate from the office of the Comptroller General likewise shall make deductions from the salaries and wages of their officers and employees for such contributions.

Like section 8-11-90, section 8-11-91 specifically permits chief finance officers of state agencies, in addition to the Comptroller General, to make deductions from State employee wages for charitable contributions. Thus, we are of the opinion that this provision permits technical colleges to take deductions from employee wages for charitable contributions.

Lastly, section 8-11-98 of the South Carolina Code (1986) allows "[t]he Comptroller General or any official of a political subdivision of the State which is authorized to disburse funds in payment of salaries or wages of public officers or employees shall, upon written authorization, deduct from the salary or wages of such officer or employee the amounts authorized for payment to any lawfully chartered credit union." Because section 8-11-98 also allows officials of political subdivisions in addition to the Comptroller General to make these deductions, we believe that this provision permits technical colleges to make deductions from employees' wages for payments to credit unions.

### **Conclusion**

State-supported technical colleges are creatures of statute and thus, only possess those powers given to them by the Legislature. Therefore, technical colleges may only take deductions from employees' wages as provided for by the Legislature. Chapter 11 of title 8 of the South

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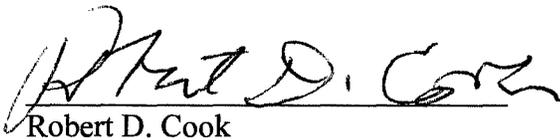
Carolina Code specifies deductions that State agencies and other governmental bodies may make from State employees' wages. As we discussed above, we believe that most of these apply to technical colleges.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General