

MERIT SYSTEM:

DEDUCTIONS FROM WAGES:

The Superintendent of the St. Louis State Hospital does not have the authority to deduct the sum of \$9.00 per month, for the noon meal, from the salaries of day employees, unless such deduction was made a condition of employment and unless such employees are required to take such meal at the hospital.



February 9, 1953

Honorable Robert Pentland  
Senator  
First District  
Missouri Senate  
Capitol Building  
Jefferson City, Missouri

Dear Senator:

This department is in receipt of your request for an official opinion. You thus state your request:

"The following situation has arisen at the St. Louis State Hospital. The Director of the hospital has required that all employees of the hospital, on day shifts pay \$9.00 each month for one meal per day at the hospital without reference to whether the employees take, or wish to take any meals there at all. This is completely aside from those employees who live on the premises and have indicated their desire to take all of their meals at the hospital, and also aside from those employees who do not live on the premises but have nevertheless indicated their desire to take the one meal. The \$9.00 is deducted from the wages of all the employees, so that they have no choice in the matter whatsoever. Some of these employees live quite near the hospital and prefer to have their noon meal at home, and in fact do take this meal at home. Some of the employees have compelling reasons for having lunch there, such as the necessity of preparing lunch for an invalid husband at home.

"In view of Section 36.140 of the 1949 Revised Statutes, which provides that

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'each employee appointed to a position subject hereto after the adoption of the pay plan shall be paid at one of the rates set forth in the pay plan for the class of positions in which he is employed', it would seem that this policy is illegal since it results in the employee receiving less for his wages than set forth in the pay plan without any compensating benefit.

"Accordingly, I am requesting your opinion upon the following points:

"1. Whether an Appointing Authority, namely, the Director of the St. Louis State Hospital, has the legal power to take deductions from the wages of employees without their consent, for services which the employees do not want and which they do not accept.

"2. Whether the Personnel Advisory Board, or other officials, of the Personnel Division of the State Department of Business & Administration has the legal power to authorize an Appointing Authority, namely, the Director of the St. Louis State Hospital, to take deductions from the wages of employees without their consent, for services which the employees do not want and which they do not accept."

Since receiving the above, you have informed us, orally, that these deductions were begun in the latter part of September or the early part of October, 1952; that they were enforced upon persons already employed; and that at the time of employment these deductions were not made a condition of employment.

Our approach to this problem will begin with the general, and certainly uncontroverted, observation that in order for deductions to be properly taken from the wages

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of employees of the St. Louis State Hospital, the person or agency making such deductions must have clear-cut legal authority for doing so. Our search of the laws of Missouri relating to the management of state institutions, such as the St. Louis State Hospital, has not been productive of our finding any specific authority vested in the superintendent of such institution to make the specific deduction which you mention, under the circumstances which you set forth.

Section 36.140, RSMo 1949, to which you direct our attention, reads as follows:

"After consultation with appointing authorities and the state fiscal officers, and after a public hearing, the director shall prepare and recommend to the board a pay plan for all classes subject to this law. Such pay plan shall include, for each class of positions, a minimum and a maximum rate, and such intermediate rates as the director considers necessary or equitable. In establishing such rates, the director shall give consideration to the experience in recruiting for positions in the state service, the rates of pay prevailing in the locality for the services performed, and for comparable services in public and private employment, living costs, maintenance, or other benefits received by employees, and the financial condition and policies of the state. Such pay plan shall take effect when approved by the board and each employee appointed to a position subject hereto after the adoption of the pay plan shall be paid at one of the rates set forth in the pay plan for the class of positions in which he is employed. The pay plan shall also be used as the basis for preparing budget estimates for submission to the legislature in so far as such budget estimates concern payment for services performed in

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positions subject hereto. Amendments to the pay plan may be recommended by the director from time to time as circumstances require and such amendments shall take effect when approved by the board. The conditions under which employees may be appointed at a rate above the minimum provided for the class, or advance from one rate to another within the rates applicable to their positions, shall be determined by the regulations."

(Underscoring ours.)

The underlined portion of the above section is clear and plain, and, as we noted above, any legal and proper deviation from it would need to be supported by a statute equally plain and clear. As we also stated above, we do not find such a statute.

In our consideration of this matter we have explored the possibility of such a deduction as you mention coming under the general administrative powers of the Superintendent of the St. Louis State Hospital. And we had the thought that if, in the opinion of the Superintendent, it was necessary, for the proper functioning and operation of the hospital, that day employees take the noon meal at the hospital, that it might properly lie within his powers to make such a requirement and to make a deduction therefor. We felt that such a conclusion would be strengthened if the taking of the noon meal at the institution, and a salary deduction therefor, were made a condition of employment. However, this theory becomes untenable in view of your statement, supra, that "Some of these employees \* \* \* \* in fact do take this meal at home," which means that the Superintendent, while making the meal deduction from all employees on the day shift, does not require them to take the noon meal at the hospital, which explodes the theory that the taking of the noon meal at the hospital is, in the opinion of the Superintendent, necessary for operational efficiency. Since the Superintendent does not require all day employees to take the noon meal at the hospital, apparently giving all day employees their option in the matter, it is obvious that he does not take the deduction for the noon meal on the ground that the taking of this meal at the hospital is necessary for administrative efficiency.

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Neither is there any showing that the taking of this meal has been made a condition of employment. Indeed, the contrary appears to be the case, i.e., that it was not a condition of employment but was apparently enforced upon persons already employed, and that it has not been made a condition of employment as to persons employed since the deduction plan went into effect.

As we stated above, in order for the Superintendent of the St. Louis State Hospital to make the deduction in question, his authority for doing so must be clear and plain. Not only do we fail to find any authority vested in him or in any other state agency for so doing, but we also fail to find any tangible theory or general grant of power which would enable him, or any state agency, to do this, in view of the facts and circumstances stated to us by you.

#### CONCLUSION.

It is the conclusion of this department that the Superintendent of the St. Louis State Hospital does not have the authority to deduct the sum of \$9.00 per month, for the noon meal, from the salaries of day-employees, unless such deduction was made a condition of employment and unless such employees are required to take such meal at the hospital.

It is the further opinion of this department that the Personnel Advisory Board or other officials of the Personnel Division of the State Department of Business and Administration does not have the legal power to authorize an appointing authority, namely, the Director of the St. Louis State Hospital, to take deductions from the wages of day employees under the circumstances set forth above.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON  
Attorney General