

COUNTY HOSPITALS: Employer of County hospital employees is not  
INCOME TAX WITHHOLDING: authorized to deduct and retain a percentage  
COUNTY COURTS: of the state income tax withheld from  
employees wages.

October 11, 1961



Honorable Ralph E. Smith  
Prosecuting Attorney  
Bates County  
Butler, Missouri

Dear Mr. Smith:

This is in reply to your request for an opinion of this office dated August 23, 1961, which reads as follows:

"The recent Bill providing for the withholding of State income tax has been brought to the writers attention by the Directors of the Bates County Memorial Hospital. The Bill provides for the withholding of the taxes by the State of Missouri and all political subdivisions thereof and all agencies or instrumentalities of the State. Under Section 7, subparagraph 2, the Bill provides that the employer, other than the United States and its agencies, the State of Missouri and political subdivisions thereof, may deduct and retain the stated percentages of the total tax withheld and paid annually. The question raised by the Directors of the Hospital is whether the hospital constitutes a political subdivision of the State and whether or not they may retain the stated percentages of the tax withheld."

In answering this question, we first call your attention to that part of paragraph 4 of Section 205.190 RSMo 1959, which reads as follows:

Honorable Ralph E. Smith

"\* \* \* provided, that all moneys received for such hospital shall be deposited in the treasury of the county to the credit of the hospital fund, and paid out only upon warrants ordered drawn by the county court of said county upon the properly authenticated vouchers of the hospital board."

We are enclosing a copy of a previous opinion of this office dated December 11, 1943 and issued to Honorable George Adams, Prosecuting Attorney, Mexico, Missouri, and a copy of an opinion of this office dated August 9, 1955 and issued to Honorable Wayne W. Waldo, Prosecuting Attorney, Pulaski County, Waynesville, Missouri.

It is clear from these opinions that the wages paid to the hospital employees are paid from county funds and they are obligations of the county which are to be paid by the county court upon properly authenticated vouchers.

The bill referred to in your opinion request is House Committee Substitute for House Bill No. 30, 71st General Assembly. Paragraph 5 of Section 1 of that bill defines an employer and then states:

"\* \* \* except that if the person or organization for whom the individual performs service does not have control of the payment of compensation for such service, the term 'employer' means the person having control of the payment of the compensation. The term includes the United States, the state and all political subdivisions thereof and all agencies or instrumentalities of any of them;"

Section 2 of that bill then provides for the employer to deduct and withhold and pay over to the Director of Revenue the amount of the tax as provided by the bill.

The above quoted exception to the definition of the term "employer" in House Committee Substitute for House Bill No. 30, strengthens the view that the county is the employer and that the county is the proper organization to withhold the tax and pay it over to the Director of Revenue.

Honorable Ralph E. Smith

The provisions for the retention of stated percentages of the tax withheld by employers, with certain exceptions, are found in paragraph 2 of Section 7 of House Committee Substitute for House Bill No. 30 which reads as follows:

"2. For every remittance to the director of revenue made on or before the date the remittance becomes due, the employer, other than the United States and its agencies, the State of Missouri and political subdivisions thereof, may deduct and retain the following percentages of the total amount of tax withheld and paid annually:"

It is clear that a county is a political subdivision of the State of Missouri and therefore is not authorized under the exception in paragraph 2 of Section 7 of House Committee Substitute for House Bill No. 30 to deduct and retain a percentage of the tax withheld.

It is our opinion that the county is the employer of the hospital employees, and it is not necessary to determine whether the Bates County Memorial Hospital is a political subdivision or an agency or instrumentality of a political subdivision. Since the county and not the trustees of the hospital are the proper officials to pay the salary and withhold the tax in the first instance, the hospital trustees are not authorized to retain a percentage of the tax withheld.

#### CONCLUSION

The employer of county hospital employees is not authorized to deduct and retain a percentage of the total amount of tax withheld under House Committee Substitute for House Bill No. 30 of the 71st General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

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Enclosures