

Opinion No. 60-33

February 24, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Leonard Price Business Manager Eastern New Mexico University Portales, New Mexico

QUESTION

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Is it legal to withhold funds from monthly salary checks that are to be placed in the teachers credit union?

CONCLUSION

Yes, if a proper assignment of such funds is made.

OPINION

{*385} ANALYSIS

There is no express statutory authority to withhold funds from monthly salary checks that are to be placed in teachers credit union. On the other hand, no statute expressly forbids such a practice. Generally, it is legal to withhold funds from monthly salary checks that are to be placed in the teachers credit union if properly assigned.

In volume 4 of Am. Jur., § 46, under heading of Assignments, is found the following:

"Compensation already earned by a public officer, however, may validly be assigned by him. Furthermore, it has been held that regardless of the invalidity of the assignment, there is nothing in the law to prevent a public officer, after he has earned his salary and a warrant has been drawn, from receiving the same, either by himself or through his attorney, and that where the salary has been thus actually appropriated by another as attorney for the officer, a garnishment thereafter by a creditor is ineffective."

In the case of **Kaminsky v. Good**, 124, Ore. 618, 265 P. 786, the Supreme Court of Oregon, in reversing the lower court, said:

"Compensation already earned by a public officer may validly be assigned by him."

We have a statute, § 43-1-12, N.M.S.A., 1953 Compilation, as to the form of assignment, which reads as follows:

"Any and all assignments of wages or salaries due or to become due to any person in order to be valid shall be acknowledged by the party making the assignment before a notary public, or other officer authorized to take acknowledgments, and if the person making such assignment is married and living with his wife, such assignment shall be recorded in the office of the {386} county clerk of the county in which the money is to be paid, and a copy thereof served upon the employer or person who is to make payment."

This statute should be followed in the case of all such assignments.

It is, therefore, our opinion that the withholding of funds from monthly salary checks already earned are legal and valid if made in statutory form.

By: Hilario Rubio

Assistant Attorney General