



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 16, 1976

ATTORNEY GENERAL OPINION NO. 76-369

Mr. Lovelle Frazier
Administrator
Kansas State Department of Credit Unions
234 Kansas Avenue
Topeka, Kansas 66603

RE: Consumer Credit Code--Regulation of Agreement and
Practices--Wage Assignments--Credit Unions

Synopsis: K.S.A. 16a-3-305 prohibits all wage assignments made in connection with a consumer credit transaction. Wage assignments granted apart from such transactions are not prohibited, nor are such assignments statutorily required to be revocable. A wage assignment is a transfer of interest or right to a specified amount of an individual's regular, periodic compensation arising from an employment relationship. A "deduction" from compensation for purposes of K.S.A. 16a-3-305 is any lawful subtraction from a person's salary which is not otherwise a wage assignment and over which the employee retains the right to revoke.

* * *

Dear Mr. Frazier:

You have requested my opinion concerning the legality of a practice of the Wichita Boeing Employees Credit Union in requiring the debtor on a loan transaction to execute an "Assignment of Wages and Payroll Authorization Deduction for Payment" in connection with all loans. A copy of this document is attached hereto and marked Exhibit "A".

In this regard, K.S.A. 16a-3-305 provides:

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"(1) A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable...."

The term "consumer credit transaction" is defined by K.S.A. 16a-1-301(12) to mean:

"...a consumer credit sale, consumer lease, or consumer loan or a modification thereof including a refinancing, consolidation, or deferral...."

Reprinting the definitions for consumer credit sale, loan and lease serves no purpose here, but the same may be examined at subsections (11), (14) and (13) of K.S.A. 16a-1-301.

In examining the text of K.S.A. 16a-3-305, the language specifically prohibits a creditor from taking an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. In this case, the form utilized by the Wichita Boeing Employees Credit Union assigns the credit union a specified amount of the member's earnings in repayment for a loan. If the loan was made for the purpose of facilitating a consumer credit transaction, such form, in my view, violates K.S.A. 16a-3-305.

Proponents of the assignment form argue that the assignment agreement specifies that the borrower may revoke the assignment at any time in accordance with the test of K.S.A. 16a-3-305 wherein it provides:

"...This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable...."

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Further, the proponents refer to the comment section following the above statute which states:

"...A revocable payroll deduction authorization in favor of a creditor, as frequently used by credit unions, is authorized by this section...."

In countering these arguments, it is clear, in my view, that the statute contemplates two separate and different types of subtractions from an individual's earnings. That is, assignments of earnings and deductions from earnings. It must be presumed that in using different terms, the Legislature contemplated that different meanings would attach to the terms. Furthermore, K.S.A. 16a-3-305 specifies that an assignment of earnings arising out of a consumer credit transaction is unenforceable and revocable by the borrower. Nothing is added to subsection (1) by the last sentence if the words "deductions" and "assignment of earnings" are given the same meaning. In accordance with generally accepted principles of statutory construction, it must be presumed that each sentence in the statute was intended to accomplish something heretofore unaccomplished. Thus, while it is safe to conclude that the Legislature intended different meanings to apply, the exact scope of these definitions remains statutorily unclear.

Some indication as to the intended meaning derives from the phrase "arising out of a consumer credit transaction". Not all wage assignments are prohibited by K.S.A. 16a-3-305--only those made in connection with a consumer credit transaction. In this regard, it is difficult to understand any rationale which treats credit unions preferentially over other lending institutions making consumer credit loans. In other words, K.S.A. 16a-3-305 was primarily designed to protect an individual's income from pre-judgment collection until there had been a determination as to the nature and extent of that person's liability. An assignment, even though revocable by the borrower, defeats the purpose for which this statute was enacted.

The source of confusion regarding K.S.A. 16a-3-305 stems from the inability to differentiate the meanings of the words "deduction" and "assignment". In general, an assignment is a manifestation to another person by the owner of a right arising under a contract or for breach of contract indicating his intention to transfer, without further action or manifestation of intention, the right to such other person or to a third person. Restatement, Contracts, §149(1).

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The term "assignment" necessarily imports the transfer of rights from the assignor to the assignee. Authorization of a deduction from earnings of the debtor vests no rights whatever in the creditor. Authorization of a deduction or withholding from earnings merely authorizes the employer to pay over to a designated third party the authorized portion of earnings of the employee, vesting no legal rights whatever in the party to whom the deducted earnings are to be paid. In my view, K.S.A. 16a-3-305 was drafted so as to distinguish between an assignment and a deduction. A deduction from compensation is a lawful withholding of income, authorized by employee or earner, which is not accompanied by a lawful vesting of the right to the money so withheld in a third party, and which the wage earner or employee retains the right to revoke or terminate at will.

In summary, K.S.A. 16a-305 prohibits all wage assignments made in connection with a consumer credit transaction. Wage assignments granted apart from such transactions are not prohibited, nor are such assignments statutorily required to be revocable. A wage assignment is a transfer of interest or right to a specified amount of an individual's regular, periodic compensation arising from an employment relationship. A "deduction" from compensation for purposes of K.S.A. 16a-3-305 is any lawful subtraction from a person's salary which is not otherwise a wage assignment and over which the deductee retains the right to revoke. The form utilized by the Wichita Boeing Employees Credit Union violates K.S.A. 16a-3-305 insofar as the "Assignment of Wages and Payroll Deduction Authorization" is concerned. That portion of the form which authorizes a deduction for share payment is permissible.

Very truly yours,



CURT T. SCHNEIDER

CTS/HTW/cgm

(Last Name)

(First Name)

(Middle Name or Initial)

Dept. No. _____ P.E.N. NO. _____ Date _____, 19____

ASSIGNMENT OF WAGES AND PAYROLL DEDUCTION AUTHORIZATION FOR PAYMENT TO BOEING EMPLOYEES CREDIT UNION

ASSIGNMENT OF WAGES AND LOAN PAYMENT DEDUCTION:

THIS ASSIGNMENT made and entered into this _____ day of _____, by _____, hereinafter called "Borrower", to the Boeing Employees Credit Union, Wichita, Kansas, hereinafter called "Credit Union":

WHEREAS Credit Union has loaned money to Borrower on Borrower's promise to repay the same in accordance with a certain note dated _____, 19____, and delivered to Credit Union by Borrower, and

WHEREAS the Borrower has in writing authorized and directed The Boeing Company to deduct from wages due or to become due him and pay to the Credit Union certain amounts from time to time, not to exceed a total of \$ _____ in accordance with the terms of the note, and

WHEREAS the Borrower desires to assign to the Credit Union all moneys now due or hereafter to become due him from The Boeing Company arising out of his present employment to secure the payment of said note,

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower hereby assigns, transfers and sets over unto the Credit Union all moneys now due and unpaid of which may hereafter become due him from The Boeing Company, Wichita, Kansas, as wages for personal services for repayment of Borrower's said note; and Borrower does hereby constitute and appoint the Credit Union his true and lawful agent and attorney with full power and authority, either in its own name or in the name of the Borrower, to collect, recover, and receive all moneys which are hereby assigned to the Credit Union, and to give good and sufficient receipt or release therefor.

The Borrower hereby represents and warrants that he has made no prior assignments or pledge of the moneys hereby assigned, or any part thereof, and that he will not, without the written consent of the Credit Union, make any assignments of the same or do anything to the prejudice of the Credit Union's rights and interest.

The Borrower hereby requests and authorizes The Boeing Company to deduct from his pay the sum of \$ _____ effective with the pay period of _____, 19____, this amount to be deducted from each paycheck until a total of _____ such deductions and one deduction of \$ _____ have been made; and to pay said deductions to the Credit Union, as loan principal, on his account. Provided however, in the event the Borrower terminates, is terminated, or placed on leave without pay, the Borrower hereby authorizes and directs The Boeing Company to deduct the entire balance of loan principal and interest from any sum due or to become due from said company, and to pay such balance to the Credit Union. The provisions hereof shall be binding upon the Borrower, his representatives, successors and assigns; unless revoked at any time by borrower.

IN WITNESS WHEREOF the Borrower has executed this instrument on the day and year above written.

(Signature of Employee)

Date

SHARE PAYMENT DEDUCTION:

I hereby request and authorize THE BOEING COMPANY to deduct the sum of \$ _____, effective with the pay period of _____, 19____, and to pay these deductions to the Wichita-Boeing Employees Credit Union as share payments to be credited to my account. You are authorized to continue such deductions until this authorization is cancelled in writing by me, and it is understood that this authorization and the wage assignment above may be cancelled by me at any time.

(Signature of Employee)

Date

ITEM	DEDUCTIONS TO BE MADE AS FOLLOWS		ONE DEDUCTION TO BE MADE AS FOLLOWS		OTHER SHARE DEDUCTIONS TO BE MADE AS FOLLOWS	
Loan Payment						
Share Deduction						
Total Deduction						

CANCELLATION OF PREVIOUS AUTHORITY

I hereby cancel my previous Share Payment Deduction authorization, and request THE BOEING COMPANY to cease making deductions of \$ _____ from my paychecks effective with my first pay period after _____, 19____.

(Signature of Employee)

EXHIBIT A.