



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 14, 1996

Mr. Kenneth H. Ashworth
Commissioner
Texas Higher Education
Coordinating Board
P.O. Box 12788
Austin, Texas 78711

Letter Opinion No. 96-051

Re: Whether a community college may deduct outstanding cellular telephone charges from an employee's salary (ID# 37464)

Dear Mr. Ashworth:

Government Code section 659.002 permits a state agency, including a community college, to deduct from an employee's salary only if the deduction is authorized by law. No law permits a community college to deduct cellular telephone charges that an employee may incur in the future. You ask whether Lee College may execute an agreement with an employee to deduct from the employee's salary outstanding cellular telephone charges as the employee incurs them. We conclude that the Government Code prohibits this deduction.

In a letter you enclosed with your request, President Sasser of Lee College describes the circumstances motivating your inquiry. He explains that GTE Mobilnet cellular service has offered a special airtime rate to cellular phone users who subscribe through a contract executed with certain state agencies, including, we presume, a community college. President Sasser states that he would like to offer the special rates to employees of the college, but GTE Mobilnet will contract only with the state agency. As a consequence, President Sasser continues, the college is ultimately liable for payment. To comply with the GTE contract yet offer the special airtime rate to college employees for their personal calls, President Sasser proposes to have an employee who desires the service sign a salary deduction authorization. Under the proposed authorization, the college may deduct from an employee's salary any amount past due to GTE Mobilnet.

We must determine the legality of the arrangement President Sasser proposes. Government Code section 659.002(a) prohibits a state agency from making a deduction from an employee's compensation, where the compensation is paid wholly or partly from state funds, unless the deduction is authorized by law. The term "state agency" includes a community college.¹ This office determined in Attorney General Opinion MW-566 that

¹See Gov't Code § 659.002(b)(1) (defining "state agency" to include institution of higher education as defined by Education Code section 61.003); see also Educ. Code § 61.003(8) (defining "institution of higher education" to include public junior college).

the statutory predecessor to Government Code section 659.002 applied to a community college.² Because Lee College is a community college,³ section 659.002 controls our answer.

Thus, unless we find a statute that explicitly authorizes the deduction Lee College proposes, we must conclude that the college is prohibited from making it. Education Code section 22.002 authorizes deductions in certain instances, but we do not believe it applies here. Under section 22.002, a community college⁴ may deduct from an employee's salary upon the employee's assignment, pledge, or transfer of an existing indebtedness:

(b) Any school employee's assignment, pledge, or transfer, as security for indebtedness, of any interest in or any part of the employee's salary or wages then due or that may become due under an existing contract of employment is enforceable only:

(1) if, before or at the time of execution, delivery, or acceptance of an assignment, pledge, or transfer, written approval is obtained in accordance with the policy of the employing school district; and

(2) to the extent that the indebtedness it secures is a valid and enforceable obligation.

In Attorney General Opinion MW-566 this office construed the precursor to section 22.002 to permit a community college to deduct from an employee's salary for indebtedness.⁵ On the other hand, this office concluded that the precursor to section

²Attorney General Opinion MW-566 (1982) at 1. The legislature has not substantively amended Government Code section 659.002 since the enactment of the statute's predecessor, V.T.C.S. art. 6813e, in 1981. See Act of Mar. 12, 1981, 67th Leg., R.S., ch. 16, § 2, 1981 Tex. Gen. Laws 21, 21, *codified by* Act of May 4, 1993, 73d Leg., R.S., ch. 268, sec. 1, § 659.002, 1993 Tex. Gen. Laws 583, 702; *see also* Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 47, 1993 Tex. Gen. Laws 583, 986 (indicating that codification is nonsubstantive).

³See Educ. Code §§ 130.005, .186.

⁴By its terms, section 22.002 of the Education Code applies to an independent school district. In Attorney General Opinion MW-566, however, this office applied the precursor to section 22.002 to a community college. Attorney General Opinion MW-566 (1982) at 4 (interpreting Education Code section 2.07, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 58(a)(1), 1995 Tex. Sess. Law Serv. 2207, 2498). Furthermore, under Education Code section 130.084, "general law governing the establishment, management and control" of an independent school district governs the board of trustees of a junior or community college district "in the establishment, management and control" of the district. Thus, section 22.002 of the Education Code, which explicitly pertains to employees of a school district, also applies to employees of a community college.

⁵See Attorney General Opinion MW-566 (1982) at 4.

22.002 did not permit a community college to deduct from the salary of an officer or employee a sum for personal savings.⁶

In our opinion, section 22.002(b) contemplates only assignment of an existing indebtedness. Under section 22.002, we believe an employee must be aware of the amount of the indebtedness prior to assigning an interest in the employee's salary. By contrast, if we construe section 22.002(b) to permit deductions for indebtedness that an employee has not yet incurred, a community college might deduct amounts of which the employee is unaware or that the employee has not had an opportunity to verify and perhaps contest. We decline to construe section 22.002 in this manner.

Consequently, we conclude that a community or junior college, such as Lee College, may not enter an agreement with an employee that will allow the college to deduct from the employee's salary any outstanding cellular telephone charges that the employee may incur.

S U M M A R Y

Section 659.002(a) of the Government Code prohibits a community or junior college, such as Lee College, from contracting with an employee to allow the college to deduct from the employee's salary any outstanding cellular telephone charges that the employee may incur. Education Code section 22.002 authorizes a community college employee to assign an interest in his or her salary only for an existing indebtedness.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

⁶*Id.*