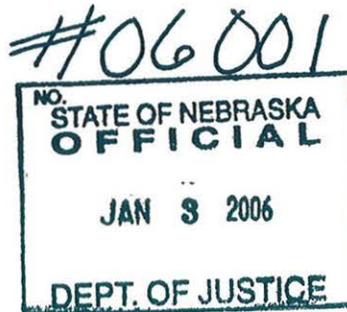




STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
TIERONE FAX (402) 471-4725

JON BRUNING
ATTORNEY GENERAL



SUBJECT: Whether the Department of Correctional Services Can Authorize Withholding of a Percentage of Wages Paid to Inmates on Work Release for Deposit Into the Victim's Compensation Fund.

REQUESTED BY: Dwite A. Pedersen, State Senator

WRITTEN BY: Jon Bruning, Attorney General
Linda L. Willard, Assistant Attorney General
Tom Stine, Assistant Attorney General

You have asked whether the Department of Correctional Services can authorize withholding of wages paid to inmates on work release for deposit into the Victim's Compensation Fund. It is our determination that the present statutory scheme does not authorize Department of Correctional Services to withhold wages paid to inmates on work release for deposit into the Victim's Compensation Fund.

By way of introduction, the Nebraska Victim's Compensation Fund is established by Neb. Rev. Stat. § 81-1835. The fund receives deposits pursuant to §§ 29-2286, 81-1836 and 83-183.01. Your request seeks an opinion on the operation of § 83-183.01, and our opinion will be limited to that section.

Neb. Rev. Stat. § 83-183.01 authorizes the Department of Correctional Services to withhold an inmates wages for deposit into the Victim's Compensation Fund:

A person committed to the department, who is earning at least minimum wage and is employed pursuant to sections 81-1827 and 83-183 shall have his or her wages set aside by the chief executive officer of the facility in a separate wage fund. . . . for the following purposes: . . . (7) For deposit in the Victim's Compensation Fund.

Id. (emphasis added). Because the statutory language uses the word "and," the inmate must be employed pursuant to the provisions of both §§ 81-1827 and 83-183 before funds may be withheld.

Section 81-1827 sets forth that the director of Correctional Services may enter into contracts to allow private corporations to operate a factory for the manufacture and processing of goods, wares or merchandise "on the grounds of any Department of Correctional Services facilities." Section 83-183 allows the director of Correctional Services to establish and maintain industries and farms in appropriate facilities so that inmates committed to the Department shall be employed eight hours per day.

Thus, in order for wages to be withheld pursuant to § 83-183.01, an inmate must be working an eight-hour day in a work program (§ 83-183), in an industry on the grounds of the Department of Correctional Services facilities (§ 81-1827). By definition, work release is a program that allows an inmate to be released from the correctional facility to work in an industry off the grounds of the facility. Therefore, § 83-183.01 does not apply to an inmate on a work release program, and this statutory scheme would not authorize Department of Correctional Services to withhold wages paid to inmates on work release for deposit into the Victim's Compensation Fund.

We are aware that § 83-184(2) sets forth that wages earned by an inmate on work release shall be credited to the person's "wage fund," and the percentage of wages withheld pursuant to § 83-183.01 is also credited to the inmate's "separate wage fund." However, there are separate statutory schemes on the disposition of funds placed in an inmate's wage fund.

Section 83-183(3) sets forth the specific matters for which money in an inmates wage fund may be used when the money is deposited by means other than through § 83-183.01. This would include wages earned during work release. Section 83-183.01 contains the specific purposes for which money collected under its provisions may be used. It is important to note that funds collected pursuant to § 83-183.01 are specifically excluded from the provisions of § 83-183(3):

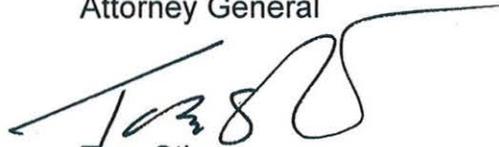
Except as provided in section 83-183.01, wage payments to a person committed to the Department shall be set aside by the chief executive officer of the facility in a separate fund. The fund shall enable such a person committed to the Department to contribute to the support of his or her dependents, if any, to make necessary purchases from the commissary, and to set aside sums to be paid to him or her at the time of his or her release from the facility.

Neb. Rev. Stat. § 83-183(3). A reasonable reading of § 83-183(3) indicates that wages paid to an inmate that are deposited into a wage fund by means other than § 83-183.01, are not subject to the withholding provisions of § 83-183.01. This includes wages earned by an inmate on work release. The specific language of § 83-183(3), along with the exception built in to § 83-183(3), indicates that wages withheld pursuant to § 83-184(2) could only be used for the specific purposes set forth in § 83-183(3). The Victim's Compensation Fund is not enumerated as one of those specific purposes.

Based on the preceding analysis, it appears the Department of Correctional Services does not have statutory authority to withhold wages paid to inmates on work release for deposit into the Victim's Compensation Fund.

Sincerely,

JON BRUNING
Attorney General



Tom Stine
Assistant Attorney General

Approved:



Attorney General

cc: Patrick O'Donnell
Clerk of the Legislature