



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

August 20, 1979

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 176

The Honorable James Holderman  
State Representative, 98th District  
1021 Denker  
Wichita, Kansas 67216

Re: Procedure, Civil--Execution and Orders of Sale--  
Restrictions on Wage Garnishment

Synopsis: The provisions of K.S.A. 1978 Supp. 60-2310(d)  
(as amended by L. 1979, ch. 183, §5) do not pre-  
clude the use of wage garnishment in connection  
with a debt which has been placed with, but not  
sold or assigned to, a debt collector or collection  
agency, irrespective of the time such debt was in-  
curred, the time it was placed for collection or  
the time such debt was reduced to judgment.

\* \* \*

Dear Representative Holderman:

You have requested our opinion as to the effect of the amendment  
of K.S.A. 1978 Supp. 60-2310(d) by Section 5 of 1979 Substitute  
for Senate Bill No. 376 (L. 1979, ch. 183, §5). Prior to this  
amendment, the pertinent portion of this subsection read as  
follows:

"If any person, firm or corporation sells  
or assigns his or her account to any person  
or collecting agency, or sends or delivers  
the same to any collector or collecting  
agency for collection, then such person,  
firm or corporation or the assignees of  
either shall not have nor be entitled to  
the benefits of wage garnishment."  
(Emphasis added.)

The Honorable James Holderman  
Page Two  
August 20, 1979

The underscored language in the foregoing quoted provisions was deleted by the amendment in question, which became effective on July 1, 1979. In Attorney General Opinion No. 79-100, we concluded that the deletion of this language removed the previous restriction on the use of wage garnishment in connection with an account or debt which had been sent to or placed with a collector or collection agency, irrespective of whether such account or debt had been legally assigned thereto. Thus, we found in that prior opinion that:

"[T]he prohibition against use of wage garnishment contained in 60-2310(d) will be limited to those situations where a creditor assigns such creditor's full rights to a debtor's account to another person or collection agency. It no longer will extend to those situations where a creditor utilizes a collection agent or agency to collect a debtor's account, but retains ownership and control thereof."

Within the context of our prior opinion, you have asked whether the amendment has "retrospective application." Specifically, you have inquired whether wage garnishment may be utilized in connection with debts incurred prior to July 1, 1979, where such debts have been placed with, but not legally assigned to, debt collectors or collection agencies. In this regard, you have identified three situations where you solicit our determination whether the use of wage garnishment is now available:

1. Debts that were incurred prior to July 1, 1979;
2. Accounts placed for collection with a collection agency prior to July 1, 1979; and
3. Accounts placed for collection with a collection agency, for which a judgment had been obtained prior to July 1, 1979.

The general rule of retrospective application, as stated in Eakes v. Hoffman-LaRoche, Inc., 220 Kan. 565, Syl. para. 1 (1976), is: "A statute will operate prospectively rather than retrospectively unless its language clearly indicates that the legislature intended the latter, and retrospective application will not be given where vested rights will be impaired." This rule of construction also was addressed in another recent decision of the Supreme Court, as follows:

The Honorable James Holderman  
Page Three  
August 20, 1979

"The general rule of statutory construction just discussed is modified, however, where the statutory change is merely procedural or remedial in nature and does not prejudicially affect the substantive rights of the parties. Crow v. City of Wichita, 222 Kan. 322, 566 P.2d 1 (1977); Eakes v. Hoffman-LaRoche, Inc., 220 Kan. at 569; Lyon v. Wilson, 201 Kan. at 768. The rule is stated in Jones v. Garrett, 192 Kan. 109, 386 P.2d 194 (1963), as follows:

"'It is the law of this state that a statute which merely changes a remedy is not invalid, as there are no vested rights in any particular remedy. While generally statutes will not be construed to give them retroactive application unless it appears that such was the legislative intent, nevertheless when a change of law merely affects the remedy or law of procedure, all rights of action will be enforced under the new procedure without regard to whether they accrued before or after such change of law and without regard to whether or not the suit has been instituted, unless there is a saving clause as to existing litigation.' (p. 115.)

"In Jones, the court defined 'procedure and practice' as the mode of proceeding by which a legal right is enforced." Nitchalls v. Williams, 225 Kan. 285, 291 (1979).

Applying the foregoing to your inquiry, it is our judgment that rules of statutory construction do not preclude the use of wage garnishment in the three situations you have described. Wage garnishment is clearly "the mode of proceeding by which a legal right is enforced." In this case, the legal right for which enforcement is sought is the right to collect a debt which has been reduced to judgment.

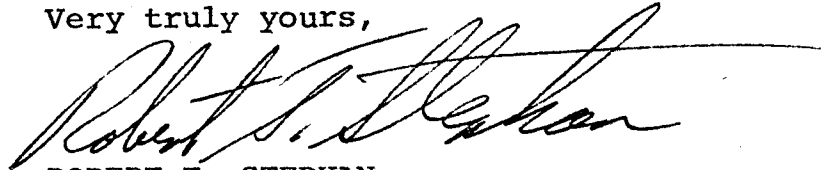
Pursuant to K.S.A. 60-715, garnishment of a person's wages is not available prior to judgment against such person. As a result, wage garnishment is available for use "in lieu of or in aid of execution," as contemplated by K.S.A. 60-714. In this regard, wage garnishment might be considered as a remedy available for the collection of such debts, or it might be considered as merely a procedure available to pursue enforcement of a person's right to collect any such debt. However, regardless

The Honorable James Holderman  
Page Four  
August 20, 1979

whether wage garnishment is viewed as being remedial or procedural in nature, it is clear that no substantive right is being pre-judicially affected by the amendment in question. Thus, to apply it in these instances does not contravene rules of statutory construction which proscribe retrospective application of a statute.

Therefore, it is our opinion that the provisions of K.S.A. 1978 Supp. 60-2310(d) (as amended by L. 1979, ch. 183, §5), do not preclude the use of wage garnishment in connection with a debt which has been placed with, but not sold or legally assigned to, a debt collector or collection agency, irrespective of the time such debt was incurred, the time it was placed for collection or the time such debt was reduced to judgment.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



W. Robert Alderson  
First Deputy Attorney General

RTS:WRA:gk