



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 6, 1988

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ATTORNEY GENERAL OPINION NO. 88-129

James R. Cobler, Director
Department of Administration
Division of Accounts and Reports
Landon State Office Bldg., 355-S
Topeka, Kansas 66612

Re: Procedure, Civil -- Process - Summons and Petition;
Service

Procedure, Civil -- Attachment and Garnishment;
Garnishment Proceedings -- Garnishment of Earnings
of Public Officers and Employees

Domestic Relations -- Enforcement of Support --
Payors Duties

Synopsis: A withholding order issued pursuant to K.S.A.
23-4,105 et seq. affecting an obligor state
official or employee should be served on the
director of accounts and reports and not on the
Attorney General. Cited herein: K.S.A. 1987 Supp.
23-4,105; 23-4,106; 23-4,107; 60-304; K.S.A. 60-723.

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Dear Mr. Cobler:

As Director of Accounts and Reports for the Kansas Department
of Administration you request our opinion on the proper
procedure in situations involving a state employee or official
who is subject to a child support order and a subsequent
withholding order issued pursuant to K.S.A. 1987 Supp.

23-4,105 et seq. Specifically, you ask upon whom service should be made, the Attorney General or the director of accounts and reports.

K.S.A. 1987 Supp. 23-4,105 et seq. permits a withholding order to be issued if a support payment is not made. The order is merely given to the payor in order to "redirect" a portion of income. It does not make the payor a party to the legal proceedings. K.S.A. 1987 Supp. 23-4,106(f) defines a payor as "any person or entity owing income to an obligor. . . ." Thus, the state is the payor of any obligor state official or employee. If that obligor official or employee does not pay court ordered child support, a subsequent withholding order can affect their income. K.S.A. 1987 Supp. 23-4,107(d) dictates that "[a]n order issued under this section shall be served on the payor and returned by the officer making service in the same manner as an order of attachment." (Emphasis added.)

In legal actions involving the service of petitions and summons upon the state or any governmental body of the state, K.S.A. 1987 Supp. 60-304(d) dictates that such service be made "by delivering a copy of the summons and petition to the attorney general or an assistant attorney general." K.S.A. 60-723(c) states that "[a]ll orders of garnishment attaching earnings of a state officer or employee shall be served upon the director of accounts and reports."

A withholding order affecting an individual obligor who is also a state official or employee does not make the state a party to a private legal matter or require service under K.S.A. 1987 Supp. 60-304(d). The state, as employer, is merely a payor. The officer handling salary payments for the payor is the director of accounts and reports. Any legal dispute involving the validity of the withholding order is contested by the individual obligor state employee or officer in their private capacity. Thus, service of summons, petitions or other legal notification concerning the validity of that order is made upon entities other than the state. Service upon the Attorney General should not be made pursuant to K.S.A. 1987 Supp. 60-304(d) because the state is not a party.

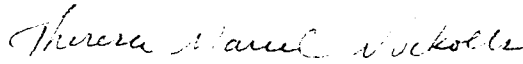
K.S.A. 1987 Supp. 23-4,107(d) dictates that withholding orders are to be served on the payor. It is therefore our opinion that, pursuant to K.S.A. 1987 Supp. 23-4,107(d), all withholding orders affecting state officers or employees as

child support obligors should be served on the director of accounts and reports and not on the Attorney General.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas