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May 31, 1979

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ATTORNEY GENERAL OPINION NO. 79- 100

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

Re: Code of Civil Procedure--Exemptions--Restrictions
on Wage Garnishment

Synopsis: By its amendment in Section 5 of 1979 Substitute for Senate Bill No. 376, which takes effect on July 1, 1979, K.S.A. 1978 Supp. 60-2310(d) will preclude the use of wage garnishment only in those situations where a creditor makes a legal assignment of a debtor's account to a collector or collection agency. Such prohibition 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.

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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, which takes effect on July 1, 1979.

Presently, prior to the effective date of its amendment by the 1979 Legislature, subsection (d) of K.S.A. 1978 Supp. 60-2310 reads, in pertinent part, as follows:

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"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.

The obvious legislative purpose of the foregoing provisions is to preclude the availability of wage garnishment to a creditor who utilizes an independent collector or collection agency in collecting a debtor's account, with such preclusion also extending to such collector and collection agency. However, the emphasized portion of the foregoing quoted language was deleted by amendment in section 5 of Substitute for Senate Bill No. 376, and you have solicited our opinion as to the effect of this amendment. Specifically, you have asked whether the remaining language continues "the broad prohibition on the use of wage garnishment when a creditor turns an account over to a debt collection agency for collection," or whether the amended language will be limited "to situations where full rights to the debtor's account would be transferred to the collection agency."

To determine the answer to your question, the meaning of the term "assignment" is relevant. In this connection, an encyclopedic definition of this term is useful:

"An assignment requires an assignor and assignee, and a thing assigned, and to constitute an assignment there must ordinarily be a valid and perfected transaction between the parties wherein the intent to vest the assignee or a third person with a present right in the thing assigned is manifest. There must be a present transfer of the assignor's right, which is so far complete as to deprive the assignor of his control over the subject of assignment, and the assignor must not retain any power of revocation." (Footnotes omitted.) 6A C.J.S. Assignments § 43 (1975).

Such general definition is applicable in Kansas, with the substance of the last sentence thereof being quoted with approval in Turner v. Williams, 114 Kan. 769, 774 (1923). In addition, we believe the

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following statement of the Kansas Supreme Court also to be relevant:

"An assignment is an expression of intention by the assignor that his right shall pass to the assignee. . . . While no particular form or mode is necessary to effect a valid assignment, yet the intent to transfer and makeover to another the property in question must be clearly established." Brewer v. Harris, 147 Kan. 197, 201 (1938).

From these definitional statements it can be seen that an assignment, in its technical, legal sense, requires that the person making the assignment must transfer completely the thing being transferred, so as to give up any control over it. With this in mind, it is apparent that subsection (d) of K.S.A. 1978 Supp. 60-2310, as presently constituted, contemplates a prohibition broader than the preclusion of wage garnishment to any person, firm or corporation that legally assigns an account to a collector or collection agency. It not only precludes the use of wage garnishment under those circumstances, but it also precludes the use of wage garnishment where the creditor "sends or delivers" the account "to any collector or collecting agency for collection." In our judgment, the latter prohibition goes beyond the circumstances of a legal assignment, and it extends to a situation where the owner of an account has utilized some independent third party to collect the account, but has not divested ownership or control over such account. By eliminating the language giving rise to this latter situation, we find an apparent legislative intent to restrict the application of this statutory prohibition to those situations where a legal assignment of an account has been made, i.e., where the assignor has transferred completely the account to another person or collection agency and has not reserved any control over such account.

Thus, on July 1 of this year, it is our opinion that the 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

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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.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:jm