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July 18, 1979

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ATTORNEY GENERAL OPINION NO. 79- 143

Mr. Charles V. Hamm
General Counsel
Kansas Department of Social
and Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Re: Labor and Industries--Employment Security Law--
Protection of Rights and Benefits

Synopsis: A judgment incorporating a monthly child support order is not a judgment arising out of a contractual relationship for the acquisition of "necessaries," and, as such, does not entitle the judgment creditor to garnish unemployment compensation benefits of an individual under K.S.A. 1978 Supp. 44-718(c).

* * *

Dear Mr. Hamm:

You request our opinion as to whether unemployment compensation benefits received by an individual are exempt from garnishment under circumstances where the Department of Social and Rehabilitation Services has taken an assignment of support rights against said individual as provided for by K.S.A. 1978 Supp. 39-754.

K.S.A. 1978 Supp. 44-718(c) creates an exemption relating to unemployment compensation benefits and provides, in part, as follows:

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"[B]enefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed." (Emphasis added.)

The underscored portion of the foregoing statutory excerpt provides an exception to the exempt status of unemployment compensation benefits which have not been co-mingled. Said exception is clear and unambiguous, and relates only to debts incurred for necessities furnished to an individual or his or her spouse or dependents. The determinative issue regarding the legality of any execution against unemployment compensation benefits is, therefore, whether said execution is pursuant to a judgment based on a debt incurred for necessities furnished to the specified individuals. Accordingly, the Department of Social and Rehabilitation Services may only garnish unemployment compensation benefits received by an individual where the Department is the holder or assignee of such a judgment.

It also is our opinion that a judgment incorporating a monthly child support order is clearly not a judgment resulting from a debt incurred for necessities furnished to any child. It is apparent from our reading of the statutes that the "debt" contemplated by K.S.A. 1978 Supp. 44-718(c) is a contractual relationship whereby a creditor sells "necessaries" in return for a promise to pay the agreed price. A monthly child support order, whether or not assigned to the Department of Social and Rehabilitation Services (pursuant to K.S.A. 1978 Supp. 39-754), is not a judgment arising out of such a contractual relationship, and does not permit the garnishment of unemployment compensation benefits pursuant to K.S.A. 1978 Supp. 44-718(c).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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