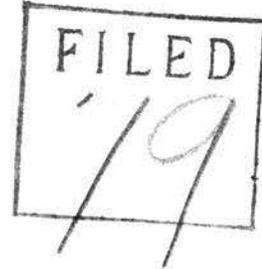


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GARNISHMENT - Liability of Missouri Commission for the Blind to.

8-30
August 27, 1934.

Mrs. Mary E. Ryder,
Executive Director,
Missouri Commission for the Blind,
3858 Westminster Place,
St. Louis, Missouri.



My dear Mrs. Ryder:

A request for an opinion has been received from you dated August 22, 1934, such request being in the following terms:

"Please give me your opinion as to whether or not the wages of blind men, with families of minors, can be attached.

The men in question receive \$11.50 per week as wages in our broom shop, and in addition are the recipients of the blind pension of \$25.00 per month.

This matter is referred to in the attached copy of letter to Mr. G. A. Ryan, attorney at law, 2521 Howard Street, for Louise Preise, 1506 Elliott Street.

We have had several recent attempts to attach the wages of our broom shop employees and will be glad to have your advice on this subject."

Revised Statutes Missouri 1929 Section 1398 provides in part as follows:

"No sheriff, constable or other officer charged with the collection of money shall, prior to the return day of an execution or other process upon which the same may be made, be liable to be summoned as garnishee; nor shall any county collector, county treasurer or municipal corporation, or any officer thereof * * * be liable to be summoned as garnishee;"

It will be observed that this statute defines certain persons and corporations as exempt from garnishment and that although some public officers and entities are specifically mentioned, the Missouri Commission for the Blind is not among them, and the question is whether or not the Missouri Commission for the Blind is exempt from garnishment even although it is not specifically exempted by this statute.

At common law a municipal corporation is exempt from garnishment on grounds of public policy, Hawthorn v. City of St. Louis, 11 Mo. 60 (1847), Fortune v. City of St. Louis, 23 Mo. 239 (1856). In the former case, the court in explaining the reasons of public policy on which it was basing its

decision said at page 61:

"But the city of St. Louis is a public municipal corporation, created for the public benefit, and not subject to the same rules governing private corporations, such as banks, insurance companies, and other similar corporations. It should not, therefore, be compelled to stand at the bar of all the courts in the State and participate in the judicial controversies carried on between debtors and creditors. Whilst these contests would be going on, the public interest would suffer, by abstracting from their corporate duties the time and attention of the officers, and occupying them in contests about which the corporation had no interest. And however desirable it may be to creditors to enforce against the officers of the corporation their just demands, by the means resorted to in this case, yet we think that public policy forbids the imposition of such a liability upon the corporation." (11 Mo. 61)

See also *Fendleton v. Perkins*, 49 Mo. 565 (1872).

The case of *Hawthorn v. City of St. Louis*, supra, was decided before the statute exempting municipal corporations from garnishment had been enacted and it might be argued that now that there is in existence a statute naming certain persons and entities as exempt from garnishment, that such statute by implication declares that persons and entities not named therein as exempt must be regarded as subject to garnishment. However, since the enactment of this statute the case of *Kein v. School District*, 42 Mo. App. 460 (1890) has been decided in which it was held that a school district was not subject to garnishment on grounds of public policy, and the court declared that it was not placing this exemption on the ground that a school district was a municipal corporation and as such expressly exempt by the statute, the court taking the position that even although school districts were not expressly exempted by the statute, nevertheless on grounds of public policy a school district should be exempt from garnishment. The court said:

"The government of the school districts is vested in a board of directors. Their powers and duties are prescribed by statute. For the performance of these duties they receive no salary or compensation. It is a trust reposed in them--the execution of which is oftentimes attended with much difficulty and embarrassment; and to allow them to be subject to garnishment for any debt that may be supposed to be due by them to any attachment defendant, it seems to us would contravene the policy of the school law. It doubtless would greatly frustrate these humble, but necessary, officers in their laudable endeavors to carry on the free public schools, if the funds which came into their hands for that purpose are to be condemned and taken from them by the courts of law, by the process of garnishment. We think the public policy of the state forbids this." (42 Mo. App. 463).

3. Mrs. Mary E. Ryder

August 27, 1934.

In the case of *State ex rel and to use of Leach v. American Surety Co.*, 210 Mo. App. 203, 242 S. W. 983 (1922) it was held that the United States Railroad Administration was not subject to garnishment, the court in holding such entity exempt saying :

"And it is well settled that such governmental agency, being a part of the sovereign power, was not subject to garnishment if such had been attempted in the present case." (210 Mo. App. 210).

This latter case may not be strong authority on the point under consideration because, although the court did not indicate its reasons for the exemption, such reasons might well have been and probably were the fact that the United States Railroad Administration is an instrumentality of the government of the United States.

We consider that the case of *Hawthorn v. City of St. Louis*, supra, establishes the principle in this state that public policy exempts strictly governmental bodies exercising governmental functions from a subjection to the confusion and distraction of garnishments against them in which they necessarily have no interest, and that the case of *Kein v. School District*, supra, defines the law of this state to be that R. S. 1929 Section 139d does not impliedly prevent an exemption from garnishment to a public governmental agency not expressly exempted therein, and in regard the Missouri Commission for the Blind as a governmental agency to which the arguments quoted above from these two cases would apply.

In conclusion, it is our opinion that the Missouri Commission for the Blind is not subject to garnishment.

Very truly yours,

EDWARD H. MILLER

ASSISTANT ATTORNEY GENERAL.

APPROVED:

Attorney General.