

Opinion No. 62 Answered by Letter

Sec. 454.240 (4) RSMo 1959 of the Uniform Reciprocal Enforcement of Support Law authorizes the punishment for contempt of court of a defendant-father for wilful non-payment according to a support order. Although some question can be raised as to the constitutionality of this statute, it will be deemed to be valid unless judicially ruled to the contrary.

December 5, 1963



Honorable Paul McGhee
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri

Dear Mr. McGhee:

We have your opinion request in which you inquire as to the constitutionality of a proceeding to imprison a defendant-father for wilful non-payment of a support order under the Uniform Enforcement of Support Law.

Statutory authority to punish a defendant-father for wilful non-payment according to a court order is apparently granted in Sec. 454.240 (4), RSMo 1959 which reads as follows:

"To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court."

We concede that there is some question as to the constitutionality of this section by reason of Art. I, Sec. 11 of the Missouri Constitution (Imprisonment for debt) and by reason of Missouri cases relating to the non-payment of alimony or non-payment of child support in purely intra-Missouri situations. See Coghlin v. Ehlert, 39 Mo. 285, 286; Ex Parte Kinsolving, 116 S.W. 1068, 1072; Harrington v. Harrington, 121 S.W. 2d 291, 293. Note, however, that none of these cases precisely rules the instant question.

Honorable Paul McGhee - 2.

December 5, 1963

It has been the long-standing policy of the Attorney General's office to try to uphold the constitutionality of an act of the legislature unless same is obviously void on its face. In this instance, we cannot categorically state that Sec. 454.240 (4) is void on its face. Thus, if it is unconstitutional, we think it is the prerogative of the courts to so declare it.

Thus, unless Sec. 454.240 (4) is judicially ruled unconstitutional, we shall presume it to be constitutional.

Very truly yours,

THOMAS F. EAGLETON
Attorney General