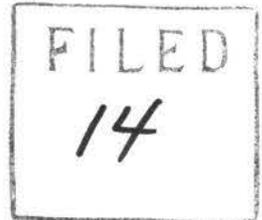


February 21, 1975

OPINION LETTER NO. 14

Answer by Letter - Nowotny

Mr. Mark L. Edelman
Deputy Commissioner of Administration
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Edelman:

This is in response to your request for an official opinion concerning the question whether the State of Missouri is required to withhold a part of an employee's earnings to pay maintenance under the provisions of Section 452.350, RSMo Supp. 1973, and, if so, whether the State of Missouri is entitled to the one dollar deduction from each payment as provided in said section.

Section 452.350, RSMo Supp. 1973, provides as follows:

"The court may order the person obligated to pay support and maintenance to make an assignment of a part of his periodic earnings or other income to the person entitled to receive the payments or to the circuit clerk as trustee for such person. The assignment is binding on the employer or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from such earnings or other income the amount specified in the assignment and shall transmit the payments to the person specified in the order. Section 432.032, RSMo,* or any other law or statute to the contrary notwithstanding, the

*Apparently an erroneous citation; no such statute number exists in RSMo; probably should be 432.030, RSMo.

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payor may deduct from each payment a sum not exceeding one dollar as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section."

The question, of course, is one of legislative intent as to whether the use of the term "employer" includes the State of Missouri. In determining this question of legislative intent, it is important to review the common law rules concerning assignment of wages. The general rule is that an assignment of future wages is void. 6 C.J.S. Assignments, §20. Furthermore, the assignment by a public officer of unearned wages is void as against public policy. 6 C.J.S. Assignments, §21.

The Supreme Court of Missouri adopted the general rule concerning assignments by public officers when it held that the assignment of wages by a post office employee is against public policy. State v. Williamson, 23 S.W. 1054 (Mo. 1893). See also State ex rel. Kansas City Loan Guarantee Co. v. Kent, 71 S.W. 1066 (K.C.Ct.App. 1903); and Nelson v. Townsend, 111 S.W. 894 (K.C.Ct.App. 1908).

The common law rule against the assignment of unearned wages has been codified in Section 432.030, RSMo, providing as follows:

"All assignments of wages, salaries or earnings must be in writing with the correct date of the assignment and the amount assigned and the name or names of the party or parties owing the wages, salaries and earnings so assigned; and all assignments of wages, salaries and earnings, not earned at the time the assignment is made, shall be null and void."

Accordingly, it appears that Section 452.530 is an exception to the general rule as stated in the cases cited and also Section 432.030. Again, the question is whether this exception to such general rules was meant to apply to the state as an employer.

It is our opinion that for the legislature to reverse the general rule as it applies to the state, the legislature would do so with language specifically naming the state as an employer. Accordingly, it is our opinion that Section 452.530 does not apply to the State of Missouri. In an analogous situation the Supreme Court of Missouri held that the state cannot be sued in

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garnishment unless the state has explicitly allowed such suit. Nacy v. LePage, 111 S.W.2d 25 (Mo. 1937). The legislature, after this case was decided, enacted Section 525.310, RSMo, explicitly making the state subject to writ of sequestration.

Therefore, we do not find any intent on the part of the legislature in Section 452.350 to make such provisions applicable against the state.

It is therefore our view that the State of Missouri is not an employer under the provisions of Section 452.350, RSMo Supp. 1973, relating to assignment of wages in domestic relation cases and therefore is not subject to order by a court to assign a part of the earnings of a state employee under such statute.

Very truly yours,

JOHN C. DANFORTH
Attorney General