GARNISHMENT - Officers of the United States having money in their hands to which certain individuals are entitled are not liable to the creditors of those individuals in the process of garnishment.

2-20

February 14, 1935.

FILED
54

Hon. W. L. Lindhorst,
Member House of Representatives,
State Capitol Building,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to whether or not officers of the United States having money in their hands to which certain individuals are entitled are liable to the creditors of those individuals in the process of garnishment.

In Vol. 12 R.C.L. at page 841 the following rule is stated with respect to this question:

> "Officers of the United States and of the different states, having money in their hands to which certain individuals are entitled, are not liable to the creditors of those individuals in the process of garnishment. This rule, as far as it is applicable to national and state officers, has never been seriously questioned, having been established at an early date in the history of our government, and having been sustained ever since by the adjudications of both the national and the state courts. One reason for the rule is that the process of garnishment is substantially the prosecution of an action by the defendant in the name of the plaintiff, against the garnishee; or, more accurately, the proceeding must be regarded as a civil suit, and not a process of execution to enforce a judgment. In this proceeding the parties have their day in court; an issue of fact may be tried by a jury, evidence adduced, judgment rendered, costs adjudged and

> execution issued on the judgment; and as a state is not liable, by virtue of its sovereignty, to be sued in its own courts, except by express authorization by the legislature, to subject its officers to garnishment would be to allow that to be accomplished indirectly that could not be attained in a direct suit. Another reason is the fact that moneys sought to be garnished, as long as they remain in the hands of the disbursing officers of the government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof; consequently it cannot, in a legal sense, be considered a portion of his effects, and, therefore, is not liable to garnishment, under process issued for the purpose of levying upon and subjecting such individual's property to the satisfaction of a judgment recovered against him."

This general rule on this proposition is stated in Vol. 28, C. J. at page 64:

> "In the absence of express provisions to the contrary, no sovereign government will be deemed to be included in the provisions of statutes prescribing who may be made garnishee. Accordingly, as a general rule, garnishment process can reach neither the federal government, nor a state, nor a territory. This exemption is sustained also by consideration of public policy."

In the case of Pruitt v. Armstrong, 56 Ala. 306, it was held that a public officer, who has public moneys in his custody for disbursement in satisfaction of demands of government, cannot be summoned as the garnishee of one having a legal right to demand and receive from him such moneys. Bricknell, C. J., speaking for the court, said:

> "The exemption does not rest only on the ground that the technical relation of debtor and creditor is not existing between the government and the person who may be entitled to receive the money, which relation is the foundation

> of the process of garnishment, or kindred legal process, for the subjection of choses in action to the payment of debts. It is founded on considerations of public policy--the embarrassments in the administration of government, which must result, if, by judicial process, the public moneys could be diverted from the specific purposes to which by law they are appropriated. Between the government and its officers and agents, or its creditors, if those having claims on it are thus termed, individuals cannot be permitted to intervene, suspending the disbursement of the public revenue and deferring the adjustment. **** of the accounts of public officers, until their judicial controversies may be terminated. The law determines the character of the voucher the disbursing officer must produce, to relieve himself from liability for the money committed to his custody. The officer cannot be compelled to receive any other, nor can the officer to whom, and with whom he must account, receive from him any other evidence of the proper and legal disbursement of the public money."

To the same effect, see Bull v. Zeigler, 54 S. W. (2d) 283.

This question was thoroughly settled by the Supreme Court of the United States in the case of Buchanan v. Alexander, 11 L. Ed. 857, wherein the Court said:

> "Six writs of attachment were issued by a justice of the peace of the above County of Norfolk, by boarding-house keepers, against certain seamen of the frigate Constitution, which had just returned from a cruise. The writs were laid on moneys in the hands of the purser, the plaintiff in error, due to the seamen for wages. The money was afterwards paid to the seamen by the purser, in disregard of the attachments, by order of the Secretary of the Navy.
>
> The purser admitted before the justice that the several sums attached were in his hands due to the seamen, but contended he was not amenable to the process. The justice entered judgments

against him on the attachments. The cases were appealed to the Superior Court of the county, which affirmed the judgments of the justice. And that being the highest court of the State which can exercise jurisdiction in the cases, and its judgments being against a right and authority set up under a law of the United States, may be revised in this court by a writ of error.

The important question is, whether the money in the hands of the purser, though due to the seamen for wages, was attachable. A purser, it would seem, cannot, in this respect, be distinguished from any other disbursing agent of the government. If the creditors of these seamen may, by process of attachment, divert the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers and men of the army and of the navy; and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service.

The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by State process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen.

It is not doubted that cases may have arisen in which the government, as a matter of policy or accommodation, may have aided a creditor of one who received money for public services; but this cannot have been under any supposed legal liability, as no such liability attaches to the government, or to its disbursing officers.

We think the question in this case is clear of doubt, and requires no further illustration.

The judgments are reversed at the costs of the defendants, and the causes are remanded to the State Court, with instructions to dismiss the attachments at the cost of the appellees in that court."

CONCLUSION

In view of the foregoing, it is the opinion of this department that officers of the United States having money in their hands to which certain individuals are entitled, are not liable to the creditors of those individuals in the process of garnishment.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

Approved:

ROY McKITTRICK,
Attorney General

JWH:AH