WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1343

COMPENSATION:
Statute Allowing State to Set Off
Its Claims Against Its Employees'
Wages Is Not Affected by Federal
Consumer Credit Protection Act

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Honorable Michael J. Bakalis
Comptroller
201 State House
Springfield, Illinois 62706

Dear Comptroller Bakalis:

You have asked my opinion on the effect of a Federal statute limiting the amount of garnishments to 25 per cent of a person's net pay, on an Illinois statute allowing the State to set off from its employees' pay amounts they owe the State. Because I do not believe the Federal statute was intended to affect such setoffs by employers, and because the constitutionality of applying such a restriction to a State is doubtful, I conclude

that the Federal statute does not apply to such setoffs.

Section 10.05 of the State Comptroller Act (Ill. Rev. Stat. 1975, ch. 15, par. 210.05) provides that if the State owes money to any person who also owes money to the State, the Comptroller should approve payment only of the amount, if any, of the State's debt after deducting the person's debt to the State:

> "Whenever any person shall be entitled to a warrant on the treasury or on other funds held by the State Treasurer, on any account whatever, against whom there shall be any account or claim in favor of the state, then due and payable, the comptroller, upon notification thereof, shall ascertain the amount due and payable to the state, as aforesaid, and draw a warrant on the treasury or on other funds held by the State Treasurer, stating the amount for which the party was entitled to a warrant, the amount deducted therefrom, and on what account, and directing the payment of the balance; which warrant as so drawn shall be entered on the books of the treasurer, and such balance only shall be paid. Whenever the comptroller draws a warrant involving a deduction ordered under this Section,he shall send copies of the voucher which authorized the warrant together with a written statement of the reason for the deduction to the payee and to the agency that originated the voucher or sent the voucher to the comptroller, and he shall retain a copy of such written statement in his records."

This unilateral setoff by the State of course involves no court proceedings.

Section 303(a) of the Federal Consumer Credit Protection Act (15 U.S.C. § 1673), provides that, with exceptions not relevant here:

> " * * * [T]he maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed
> (1) 25 per centum of his disposable earnings for that week, or
> (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a) (1) of Title 29 in effect at the time the earnings are payable, whichever is less. * * *"

If the Act said no more, it unquestionably would not restrict the State's setoffs because such setoffs do not come within the ordinary meaning of the word "garnishment." However, it has been argued that the Act does apply because of the following definition in its section 302(c) (15 U.S.C. § 1672(c)):

> " * * *
>
> The term 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."

The argument is that the setoff allowed in the Illinois statute is such a "legal or equitable procedure."

The State's setoff could in a rather strained sense be called a "legal * * * procedure," since it is allowed by statute. However, the only reason the procedure is set forth in a statute is that the particular employer involved, the State, must direct the acts of its officers such as the Comptroller by statute. Were the employer a private company, such a setoff

would be provided by a mere internal company rule. No hint appears of a Congressional intent that the Federal act, though not purporting to restrict setoffs by private employers against their own employees' pay, should apply when states make identical setoffs, merely because states must provide for such setoffs by statute.

Furthermore, such an interpretation of the words "legal or equitable procedure" would be opposed by a solid line of authority interpreting such words. Ballentine's Law Dictionary (3d ed. 1969) defines "legal proceeding" as follows:

> "In the broad sense, any action or special proceeding in court. In a narrower sense, an action or special proceeding at law rather than in equity."

Black's Law Dictionary (4th ed. 1968) defines it as:

> " * * * Any proceedings in court of justice, whether law or equity, interlocutory or final, by which property of debtor is seized and diverted from his general creditors. * * * This term includes all proceedings authorized or sanctioned by law, and brought or instituted in a court of justice or legal tribunal, for the acquiring of a right or the enforcement of a remedy. [Citations]"

In Sampsell v. Straub (1951), 189 F. 2d 379, 381-382, involving the quoted words in a Federal statute, the United States Court of Appeals for the 9th Circuit said:

" * * *

> In natural connotation the words 'by legal or equitable proceedings' suggest a lien which attaches by force of judicial process. * * *
>
> No alternative construction has been suggested which would give meaning to the phrase in question. We think it connotes judicial proceedings and should not be expanded [to include a non-judicial lien]." (Emphasis added.)

In Henderson v. Mayer (1912), 225 U.S. 631, 639, the United States Supreme Court discussed a landlord's lien created by a distress warrant. Although that lien required more judicial intervention than does the setoff involved here, the Court nevertheless stated:

> " * * * In issuing the distress warrant the justice acted ministerially. Savage v. Oliver, 110 Georgia, 636. The sheriff was not required to return it to any court, and no judicial hearing or action was necessary to authorize him to sell for the purpose of realizing funds with which to pay the rent. Such a lien was not created by a judgment nor 'obtained through legal proceedings.'"

Finally, the only available Federal cases construing the Act speak of the definition of "garnishment" as referring to judicial proceedings:

" * * *

> * * * Congress must have intended that the Act's restrictions on garnishment should apply to other, similar orders of the bankruptcy court * * *.
>
> * * * "

(Emphasis added.)

In re Cedor (N.D. Cal. 1972), 337 F. Supp. 1103-1107, aff'd 470 F. 2d 996 (9th Cir.), cert. denied 411 U.S. 973.

> " * * * Thus, it appears clear that by the term 'garnishment' Congress contemplated some type of judicial transaction. Nothing in the legislative history of the statute is to the contrary. * * *"

Western v. Hodgson (4th Cir. 1973), 494 F. 2d 379, 382.

If the Act's wording were not enough to close the issue of applicability to setoffs, the legislative history would provide still further support for the conclusion reached here. The bill which became the Consumer Credit Protection Act originated in the House of Representatives, and its relevant provisions are not substantially different from those in the original House bill. The committee report, H.R. Rep. 1040, 90th Con., 2d sess., reprinted in 1968 U. S. Code Cong. & Admin. News at 1962 to 1990, made two major references to the purpose of the restrictions on garnishment. First, the report cites a message from President Johnson saying:

> "Hundreds of workers among the poor lose their jobs or most of their wages each year as a result of garnishment proceedings. In many cases, wages are garnished by unscrupulous merchants and lenders whose practices trap the unwitting workers. (1968 U. S. Code Cong. & Admin. News at 1966.)

* * *

Secondly, the committee's own explanation of the purpose of the garnishment restriction was as follows:

> "Your committee finds that the garnishment of wages is frequently an essential element in the predatory extension of credit resulting in a disruption of employment, production, as well as consumption [sic]." 1968 U. S. Code Cong. & Admin. News at 1977.

The Act itself, in its statement of purpose, says (sec. 301(a), 15 U.S.C. § 1671(a)):

> "(a) The Congress finds:
>
> (1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.
>
> (2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.
>
> * * *

There is no reason to believe that Congress, in this Act designed to prevent "predatory extensions of credit," intended to restrict employers in withholding pay from their own employees. Such action might be needed to recover funds lost by the employee's improper incurring of expenses, overpayments of salary, or other problems arising out of an employment relationship that have nothing to do with extensions of credit, predatory or otherwise.

Congress clearly did not make the Act applicable to pay setoffs, such as the Illinois statute allows.

If the Federal Consumer Credit Protection Act were applied to the Illinois pay setoffs, there would be serious doubt about its constitutionality. In National League of Cities v. Usery (1976), 426 U.S. 833, the United States Supreme Court held that Congress could not constitutionally apply a minimum wage statute to state governments. The Court there said (426 U.S. at 845):

> " * * * It is one thing to recognize the authority of Congress to enact laws regulating individual businesses necessarily subject to the dual sovereignty of the government of the Nation and of the State in which they reside. It is quite another to uphold a similar exercise of congressional authority directed, not to private citizens, but to the States as States. We have repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner. * * *"

Because of the rule that courts will, if possible, construe a statute in such a way as to avoid constitutional doubts (Johnson v. Robison (1974), 415 U.S. 361, 366-367), it is my opinion that the Federal

act does not apply to the setoffs described in this opinion.

Very truly yours,

ATTORNEY GENERAL