

1974 S.C. Op. Atty. Gen. 298 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3874, 1974 WL 21373

Office of the Attorney General

State of South Carolina

Opinion No. 3874

October 22, 1974

***1 1. The State Housing Authority is empowered to undertake administrative implementation of voluntary wage assignments.**

2. Such assignments must be in the form of a written contract with the employer to be legally enforceable.

3. Partial assignment of wages is legal if one maintains a distinction between ‘garnishment’ and ‘assignment.’

Chairman

S. C. State Housing Authority

Your letter of September 23, 1974, has been assigned to me for answer. The ‘South Carolina State Housing Authority Act of 1974’ was signed into law July 2, 1974. See Act bearing R. No. 1171, July 2, 1974. In implementing this act, the Authority's Commissioners desire an opinion from this Office on the following questions:

1. Can the Authority legally undertake administrative implementation of the voluntary wage assignment provision?
2. Can the assignment of wages under the voluntary wage assignment plan be legally enforced in a court of law?
3. Does the voluntary assignment violate any specific State laws already in force?

As to the first question, pursuant to Section 4 of Act No. 1171,

. . . the authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its functions in any county or municipality in this State and, *without limitation*, may exercise any of the following, powers: (1) Adopt, amend and repeal bylaws, rules and regulation necessary or desirable for the performance of its functions, . . .

. . .

(13) Prescribe and adopt rules and regulations with respect to, and institute any action or proceeding necessary to regulate the rents, profits and any other housing development costs of housing developments partially or wholly financed by the authority, and the use of the proceeds of loans made by the authority or in which the authority has any interest.

. . .

(18) Adopt, and institute any action or proceeding necessary to enforce, rules and regulations designed to insure against any loss in connection with its property and other assets and those of housing sponsors or persons and families of moderate to low income, partially or wholly financed by the Authority.

Assuming *arguendo* that the voluntary assignment of wages is legal in South Carolina, pursuant to Section 4 of the Act, the Authority clearly has the power to administratively implement, through adoption of rules and regulations, voluntary wage assignment provisions in connection with housing partially or wholly financed by the Authority.

The second question you present involves the enforceability of the assignment of wage provisions. Under South Carolina law '[t]he assignment of any wages or salary or any part thereof by any employer shall not operate so as to bind the employer without the written consent or acknowledgment of the employer.' § 40-103, *Code of Laws of South Carolina* (1962). Therefore, in order to be in a position to enforce a wage assignment in a court of law, the Authority must include in its rules and regulations provisions that assure that the employer has consented to any assignment. Such a rule or regulation might provide for a contract between the employer and the Authority. It should be noted, however, that the above South Carolina statute speaks only in terms of 'any employer,' and in light of this, any voluntary assignment provisions should speak in terms of 'wages' and 'employers.' Assignment of any income other than wages may possibly run afoul of various Federal provisions, *i.e.*, social security payments may not be assigned by Federal law.

*2 The final question presented is whether or not a voluntary assignment of wages is in violation of any specific State law. A wage assignment *per se* is not in violation of any State law. However, an assignment of one's entire wages is against the public policy of the State. Furthermore, there is a question as to whether or not [15 USCA §§ 1671 et seq.](#) (1974), which restricts garnishment, is applicable to wage assignment. As used in the United States Code, '[t]he 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.' [15 USCA § 1672\(c\) at 588](#) (1974).

In his original interpretation of the garnishment provision, the Administrator of the Wage and Hour Division of the Department of Labor issued several opinions

...

defining the term 'garnishment' as referring only to those instances in which a court proceeding was involved and excluding private transactions, such as wage assignments, effectuated by purely private means. As a consequence of newly developed facts and circumstances, the Department of Labor is currently reviewing its position with regard to the definition to be applied to the term 'garnishment.' In particular it is reviewing its position regarding the requirement of a court proceeding in order to constitute a garnishment within the meaning of the Act. [Western v. Hodgson, 359 F. Supp. 194 at 202 \(S.D.W.V. 1973\)](#).

In reviewing [29 CFR § 870.1 et seq.](#), 'garnishment of earnings,' and in conversations with the United States Attorney (DSC), the Wage and Hour Division of the Department of Labor, its regional Solicitor in Atlanta, Georgia, and its Solicitor for Regulation and Enforcement in Washington, D.C., I have been unable to determine whether or not the Department of Labor includes wage assignment within the term 'garnishment.'

Since the Department of Labor is apparently still reviewing the specific questions as to whether or not garnishment includes only those instances which involve Court proceedings, it is the recommendation of this Office that in establishing wage assignment provisions, the Authority follow the guidelines set forth in the Federal statutes regulating 'Restrictions on garnishment.' This course of action will prevent any future problems in the event the Department of Labor includes wage assignments with the term 'garnishment.' For your convenience, I am enclosing copies of the Federal statute and regulations which set a limitation on the portion of an individual's wages subject to 'garnishment.' If you have any questions regarding these statutes and regulations, please do not hesitate to contact this Office. Also once the Authority has drafted its proposed rules and regulations, if you would like this Office to review them with regard to any possible legal problems we would be more than happy to do so.

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