

## CCPA-54

February 26, 1971

This is in reply to your letters of December 9 and December 10, 1970, concerning general procedural matters in the granting of exemptions to States under section 305 of the Consumer Credit Protection Act and the exemption from the provisions of section 303(a) of the Act for garnishments issued under the laws of the State of Kentucky. You question the propriety of granting the exemption because you believe that section 427.050 of the Kentucky Revised Statutes does not protect certain debtors to the extent they would be protected under section 303(a) of the CCPA.

Section 427.050 of the Kentucky Revised Statutes contains the following provisions:

"(1) The law of the state wherein wages are earned and payable relating to exemptions shall apply to all garnishments served in the State of Kentucky, except that Kentucky law shall exclusively apply

- (a) where the defendant was personally served with process in the State of Kentucky, or
- (b) where the defendant was a bona fide resident of the State of Kentucky when the subject debt arose, or
- (c) where the defendant was a bona fide resident of the State of Kentucky when the cause of action arose.

(2) Where the law of a state other than Kentucky applies to a particular garnishment, the garnishee may plead such exemption law."

It is apparent that there will be few situations where the law of a State other than Kentucky applies to a particular garnishment under this section. Furthermore, any provision of any State law, which in a particular case, does not restrict garnishment to the extent it is restricted by Title III is preempted by Title III. This is specifically provided in the Act and only those provisions of State laws providing greater restriction on garnishment than Title III in a particular case will continue to be applied. Therefore, it is clear that no Kentucky court acting under the terms of Title III could order garnishment in excess of that permitted under this Title irrespective of whether or not the exemption law of another State is pleaded under section 427.050(2) of the KRS.

To the best of our knowledge, there is no justification for believing that the State of Kentucky judicial system will fail to properly enforce the State and Federal restrictions on garnishment. We view the proviso concerning section 427.050 of the KRS as merely a caution to the State. In our judgment the opinion of Attorney General Breckinridge regarding KRS section 427.050 was not determinative in the decision whether to grant an exemption, as our analysis of the State law had already indicated to us that its garnishment restrictions were substantially similar to section 303(a) of the CCPA.

We are, of course, deeply interested in the manner in which the State enforces garnishment restrictions and if we find the terms and conditions of the exemption, such as the proviso, are

being violated, we would take action to terminate the exemption under the provisions of 29 CFR 870.56. In this connection the Attorney General's opinion is meaningful, for it gives some assurance that the State judiciary system would interpret State and Federal law in accord with our views in this matter. Should this not be the case, it will be helpful in terminating the exemption.

With respect to your comments concerning due process of law in the granting of exemptions pursuant to section 305 of the Act, we believe it suffices that the procedures prescribed in 29 CFR 870 comply with the requirements of the Administrative Procedures Act. Where any additional information concerning the State's application, such as the Attorney General's opinion in this case, is not material in reaching our decision and is not considered a supplement to the application, there is no purpose in informing interested persons and inviting their comments.

For the above reasons we do not consider any citizen of Kentucky to be denied the full protection of Title III. Furthermore, should any significant problems arise after an exemption has been granted in this or any other State, the regulations as now constituted provide us with sufficient means to control the situation.

With respect to your letter of October 14, 1970, on general procedural matters under section 305, there has apparently been some misunderstanding. In order to expedite a reply, the letter was answered orally by Mr. Joseph P. McAuliffe of our staff to Mr. \*\*\* of your organization on November 12, 1970. Mr. \*\*\* indicated at that time that the oral reply was satisfactory. In any case this letter also gives our views on this matter.

Sincerely,

Robert D. Moran  
Administrator