U.S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

OFFICE OF THE ADMINISTRATOR

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WH-1

This is in reply to your letter of June 11, 1971, which was referred to this office for a reply concerning Title III of the Consumer Credit Protection Act.

As explained in your letter and in a conversation with Mr. Hoffman of my staff, the corporation pays 800 of its employees by depositing the total amount due these employees with a local bank. A checking account has been set up for each employee to facilitate this payroll system, and each pay day the net pay due each employee after Federal and State taxes and usually insurance is credited to his account. The bank sends a voucher to that effect to each employee, and the employees draw against their account. They are not required to maintain a balance in their accounts, and it is believed that employees generally withdraw all of the funds before the next pay day.

Certain creditors of various employees have discovered this payroll system and now attach the employee's bank account by having garnishment summons served upon the bank. The bank freezes the account and pays the bank balance to the creditor. It is possible that an account will contain some monies that are not wages, but as a practical matter this is not expected to occur often. You believe that the effect of this procedure is a violation of the Act where more of the employees' disposable earnings are garnished than is permitted under Title III.

Under these circumstances it seems clear that the bank is acting as the agent of the employer in the performance of the payroll functions. This being so, the bank stands in the shoes of the employer, and may be garnished for wages to the same extent, and subject to the same restrictions on garnishment as the employer. The question thus arises as to whether the earnings once they are credited to the employee's bank account retain their identity as earnings and are within the protection of section 303(a).

In this connection it is clear that Congress intended to establish a guaranteed floor below which garnishment is prohibited thereby assuring to the employee that "a garnishment cannot leave him less than $48" each workweek or the

appropriate multiple equivalent for the pay period "to live on" (114 Cong. Rec. 4122). As you know, the problem is one of major proportions in view of the increasing number of employers who are using banks to perform their payroll services for them and the correspondingly increasing number of creditors who are seizing upon this method of payment as a means of attaching wages in supplementary proceedings without regard to the restrictions contained in section 303(a) of the Act. To hold that an employee loses the protection of the Act merely because his wages are paid by the bank deposit method of payment would completely frustrate the purposes of the Act. The credit in the bank is simply a convenient method which the employer has devised for his own convenience to facilitate payment of the wages and it should not be used to deprive the employee of his right to receive that portion of his earnings guaranteed to be exempt from garnishment under the Act. The garnishment restrictions were designed to "relieve countless debtors driven by economic depression from plunging into bankruptcy and insure a continued means of support for themselves and their families", (H. Rept. No. 1040, p. 211) and they should be construed to carry out the intent and purpose of Congress.

In numerous cases adjudicated under other State and Federal statutes, the courts, in order to effectuate the purposes of a statute, have held that exempt earnings of a debtor or other exempt funds do not lose their exempt character by being deposited in a bank account. Moreover, these cases we have found so far involve situations where the exempt funds have been voluntarily placed in a bank account by the debtor. This principle would apply a fortiori to situations where, as here, the crediting of the account is the method chosen by the employer to effectuate the payment of wages and acceptance of the plan is a condition precedent to employment. Nor do we believe that the restrictions contained in section 303(a) of the Act are limited to situations where the exempt wages are still in the hands of the employer. The restrictions apply to earnings paid or payable, and the maximum amount which may be subjected to garnishment, defined as any procedure through which the earnings are required to be withheld in payment of any debt, "may not exceed" the amounts prescribed in the Act. Certainly we should not impose upon the statute restrictions or limitations which would tend to defeat or restrict the manifest purposes of the Act.

In conclusion, we are of the opinion that the garnishment of earnings in a bank account under the circumstances of this case is an unrestricted garnishment of earnings prohibited by section 303(a) of the Act. Further, if the earnings are subjected to garnishment while in the hands of the employer or its agent, the bank, before they are credited to the employee's account the earnings are not subject to further attachment after the transfer is made.

In order to effect a remedy for this problem, we shall have one of our compliance officers contact you to investigate this matter.

Sincerely,

Horace E. Menasco
Horace E. Menasco
Administrator

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