

## CCPA-60

August 9, 1972

Recently \*\*\* of your office was contacted by Mr. Solomon Sugarman of my staff concerning the laws of the State of Minnesota pertaining to garnishment of earnings.

We believe that there are situations where the application of your State law would result in garnishments in excess of the amount permitted by Title III of the Consumer Credit Protection Act (15 U.S.C. 1671, et seq.), which is administered by this office. Specifically, the provisions of Chapter 571 of the Minnesota Code appear to operate so that upon the service of the garnishment summons prescribed in §§571.47 and 571.48, an amount not in excess of 110 percent of the judgment creditor's judgment is withheld from payment to the judgment debtor for an indefinite period, irrespective of whether the amount withheld is in excess of that permitted by section 303 of Title III.

The garnishment summons forms prescribed §§571.47 and 571.48 on their face do not restrict the amount withheld to the limitation prescribed in section 303 of the Federal Law. A garnishee receiving a garnishment summons in the precise form prescribed by State law (which we understand is the form used by local publishers in Minnesota) has no notice of the applicable Federal restriction on garnishment. Thus, we believe the garnishment withholding instructions on the prescribed State forms are generally given effect without reference to whether such instructions cause any withholding in excess of Federal restrictions.

Under Title III, a garnishment summons may never cause any withholding of earnings in excess of that subject to garnishment under section 303. A section or provision of the State law that requires a larger amount to be garnished than the Federal law permits is considered preempted by the Federal law. Accordingly, under section 303 of Title III any employer (or garnishee) must pay any employee (or defendant) the full amount of his exempt disposable earnings on the regular pay day for the pay period in which the wages were earned. (See enclosed copy of opinion letter WH-90; see also the opinion in Higgins v. Wilkerson, 19 WHC 676, DC Kansas, August 20, 1970.)

We realize that the best long range remedy for this problem would be legislation, and would be pleased to review any legislation you recommend in this area for conformity to Federal law.

For the present, though, there remains the matter of insuring compliance with Title III. In a number of States, we have aided State officials in modifying garnishment summons forms to incorporate this regard. We believe an opinion by the Attorney General would aid in establishing such modifications. Also, the question of possible conflict between State and Federal law, which appears to have been used as an excuse for noncompliance with Title III, would be effectively quieted.

We trust that you will assist us to ensure that debtors in your State receive the protection given them by the Federal law.

Sincerely,

Horace E. Menasco  
Deputy Assistant Secretary