

## CCPA-65

March 10, 1976

This will reply to your letter concerning Title III, Restriction on Garnishment, of the Consumer Credit Protection Act.

Your letter was in the form of an application for exemption of the State of Washington garnishment law from the provisions of section 303(a) of the Consumer Credit Protection Act under the provision in section 305 of that Act. However, in conversations with \*\*\* of my staff, it was mutually agreed that you were requesting an opinion concerning the applicability of Title III to certain withholding orders issued pursuant to the Washington State law. The question thus presented is whether earnings withheld pursuant to a child support order or lien issued by the State Secretary of the Department of Social and Health Services pursuant to State law would come within the section 303(b)(1) exemption of "any order of any court for the support of any person" from the garnishment restrictions of section 303(a).

Chapter 74.20A of the Revised Code of Washington provides that in the absence of a superior court order the Secretary of the Department of Social and Health Services "may serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause in a hearing held by the Department why the finding of responsibility and/or amount thereof is incorrect, \* \* \* (74.20A.055). This notice sets forth the amount the Department has determined the responsible parent owes on the child support debt and an appropriate amount to be paid in the future; all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged, and the ability of the responsible parent to pay all or any portion of the amount so paid. Upon request for a hearing, the execution of notice and finding of financial responsibility is stayed pending the decision on such hearing, or any direct appeal to the courts from that decision. If liability is established, a support lien against earnings may attach and be effective subject to statutory service requirements and upon filing the lien with the appropriate county auditor (74.20A.060). At that point, the Secretary of Social and Health Services may issue an order, which is served upon both employer and debtor, to withhold and deliver up to 50 percent of the debtor's disposable earnings (74.20A.080, 74,20A.090). The U.S. District Court for the Western District of Washington in the case of Dixon v. Smith, Civil Action No. 81772C2 (September 28, 1973), found the aforementioned state statutory procedure and regulations promulgated thereunder to be "the exclusive constitutional remedies to assert debts claimed" thereunder.

Thus, the Revised Code of Washington provides, in essence, that a debt is due and owing the State Department of Social and Health Services by a responsible natural or adoptive parent to the extent of public assistance provided on behalf of their children, but limited to the amount of any superior court order or final decree of divorce. The claim of the Department, not paid when due, becomes a lien against all property of such parental debtor "with priority of a secured creditor" extending up to 50 percent of the disposable earnings of the debtor.

Section 302(c) of Title III defines garnishment: as "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." We

would regard the procedure established by the State of Washington to require withholding of earnings pursuant to an order of the Secretary of the Department of Social and Health Services for payment of a support debt as a "legal - procedure" within the meaning of section 302(c), even in those cases where an actual court proceeding has not taken place. Accordingly, such a notice of execution would be considered a "garnishment" for purposes of Title III.

Section 303(b)(1) exempts from the restrictions of section 303(a) "any order of any court for the support of any person." This exemption evidences a Congressional purpose to favor family maintenance over protection of the debtor; and is consistent with the view that the Washington Department of Social and Health Services exercising judicial functions in a constitutionally recognized manner comes within the meaning of the term "court," as used in section 303(b)(1). Washington State law provides that before issuance of an order to withhold and deliver, there shall be notice, a fair hearing, and court review upon appeal. Accordingly, we would regard this administrative agency in the exercise of its judicial functions and powers as a "court" for purposes of section 303(b)(1).

Therefore, the restrictions of section 303(a) would not be applicable to the withholding of earnings pursuant to a child support order or lien issued by the State Secretary of the Department of Social and Health Services.

Sincerely,

Ronald J. James  
Administrator