

DEPARTMENT OF BENEFIT PAYMENTS



July 2, 1974

ALL-COUNTY LETTER NO. 74-116

TO: ALL DISTRICT ATTORNEYS

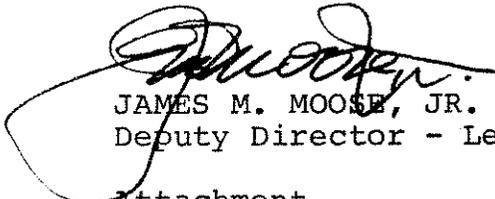
SUBJECT: WAGE ASSIGNMENTS; GOVERNMENT EMPLOYEES

REFERENCE:

Attached is a copy of the Opinion of the Attorney General No. CV 72/319, dated May 15, 1974, regarding the applicability of Civil Code Section 4701 to governmental employers and employees.

The Opinion concludes that Civil Code Section 4701 is applicable in these situations, and that a court may order government employees to assign a portion of their salary for the support of their minor children. I hope you find this helpful.

Sincerely,



JAMES M. MOOSE, JR.
Deputy Director - Legal Affairs

Attachment

cc: CWDA
CWD's**OBSOLETE**

Superseded by

ACL #77-15

Issued

3-17-77

OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

	:	
OPINION	:	
of	:	No. CV 72/319
EVELLE J. YOUNGER Attorney General	:	MAY 15, 1974
DAVID N. SANDLER	:	
Deputy Attorney General	:	

The Honorable Richard M. Ramsey, County Counsel of the County of Sonoma, has requested an opinion on the following question:

Are the provisions of section 4701 of the Civil Code, authorizing a court to order a parent or parents of a minor child to assign a portion of salary or wages due, or to be due in the future, for the support of a minor child, binding upon governmental employers of such parents in light of section 710 of the Code of Civil Procedure, which sets forth specific means whereby a judgment for money rendered against a governmental employee may be satisfied out of the salary or wages of said employee payable by a governmental employer.

The conclusion is:

A court-ordered assignment of parental wages or salary, effected pursuant to section 4701 of the Civil Code, is applicable to parents who are employees of governmental entities and is binding upon governmental employers of such parents, notwithstanding section 710 of the Code of Civil Procedure.

ANALYSIS

Section 4701 of the Civil Code reads as follows: 1/

"In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the county clerk, probation officer, or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance and education of the minor child. Such order shall operate as an assignment and be binding upon an employer upon the service of a copy of such order upon such employer and until further order of the court. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to such order. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court."

Code of Civil Procedure section 710 provides means for collection of a judgment for the payment of money rendered against a judgment debtor to whom money is owed by the State of California or by any political subdivision of the state. Without quoting the statute at length, its provisions set forth a detailed procedure requiring the judgment creditor to file with the governmental employer a transcript or abstract of judgment and for the governmental employer to pay into court, after deducting a specified portion therefrom, the salary or wages due the judgment debtor.

The question presented is whether a section 4701 court order is applicable against governmental employers in light of Code of Civil Procedure section 710. It is our opinion that, while section 4701 makes no express reference to wages or salary payable by a governmental employer, its provisions operate to allow assignment of such wages without conflicting with Code of Civil Procedure section 710.

1. All section references are to the Civil Code unless otherwise designated.

Section 4700(a) authorizes a court to order either or both parents of a minor child to "pay any amount necessary for the support, maintenance, and education of the child."

Section 4701 authorizes a court to order the assignment of parental wages in satisfaction of a section 4700 child support order. The order to assign operates directly upon the parental salary to transfer title and ownership to the minor child. 3 Witkin, California Procedure § 100 (2nd Ed. 1971); 5 Cal.Jur.2d, Assignments § 2.

Generally, an assignment of wages, to be valid, must comply with procedures established by Labor Code section 300. A section 4701 court order to assign, however, is exempt from these procedures inasmuch as the court order itself operates as an assignment. It should be noted that such assignment order has priority over any attachment, execution, or other assignment. 2/

Section 710 of the Code of Civil Procedure provides procedures for satisfaction of a judgment for the payment of money. While a "judgment" and an "order" share similar attributes, they are not necessarily equivalent expressions. A "final order" may be regarded as a "judgment" inasmuch as it completely disposes of the subject-matter and the rights of the parties. Black's Law Dictionary, p. 1247 (4th Ed., 1951). However, there is nothing in sections 4700 and 4701 limiting the court orders for support and for assignment of salary to "final orders." Section 4600 authorizes the court to make orders for the custody of a minor child "during the pendency of the proceeding or at any time thereafter." Section 4701 court orders for assignment may also be rendered during the pendency of the proceeding where an order for support has issued. Accordingly, section 710 of the Code of Civil Procedure would not apply to an interim section 4701 court order.

More importantly, while the cases involving interpretation of Code of Civil Procedure section 710 3/ generally hold that attachment, execution, or other levy on a public agency employer is barred outside the applicable confines of this statute, it is our opinion that a court-ordered assignment of wages pursuant to section 4701 does not conflict with the policy underlying this interpretation.

2. Government Code sections 1150 to 1158 inclusive authorize certain deductions to be made from the salary and wages of officers and employees of public agencies and the State of California at the option of the officers and employees. The deductions made pursuant to a section 4701 court order are not optional.

3. Walker v. Rich, 79 Cal.App. 139, 145 (1926); Weiser v. Payne, 110 Cal.App. 378, 380 (1930).

The purpose of Code of Civil Procedure section 710 is to limit the potential liability of a governmental employer to an employee whose wages are sought to be garnished by a judgment creditor. Ruperich v. Bachr, 142 Cal. 190, 193 (1904); McDaniel v. City and County of San Francisco, 259 Cal.App.2d 356 (1968). In McDaniel the Court of Appeal stated, at page 363:

"The purpose of providing a special garnishment procedure in the superior court where governmental units are involved is clearly to shift to the court the burden of adjudicating any claims of exemption which may arise and to insulate the governmental units from liability for wrongful payments to garnishing creditors."

The application of a section 4701 assignment order to a governmental employee would not encroach upon the protection afforded a governmental employer by Code of Civil Procedure section 710. The court may issue the assignment order on obtaining in personam jurisdiction over the parent-employee. Baker v. Baker, 136 Cal. 302, 305 (1902). The court is then authorized to determine "that portion of salary or wages of either parent . . . as will be sufficient to pay the amount ordered." The employer, bound by the court's assignment order, is thereby insulated from liability to the employee. In these circumstances, section 4701 promotes the policy underlying Code of Civil Procedure section 710. Accordingly, a court-ordered assignment pursuant to section 4701 is applicable to wages of governmental employees and is binding upon governmental employers.

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