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FILE NO. S-967

COUNTIES:
Assignment of Wages

Honorable Philip G. Reinhard
State's Attorney
County of Winnebago
Courthouse Building, Suite 619
Rockford, Illinois 61101

Dear Mr. Reinhard:

This responds to your request for an opinion as to whether non-home rule counties are amenable to the provisions of "AN ACT to promote the welfare of wage earners by regulating the assignment of wages, and prescribing a penalty for the violation thereof". (Ill. Rev. Stat. 1973, ch. 48, pars. 39.1 through 39.8.) This Act permits the assignment of wages by an employee and requires the employer to honor such assignment. The Act provides no definition of "employer" but it is clear that a county is an employer and thus, since there is no exception in the Act for counties or other units of local govern-

ment, they would be within the terms of the Act unless exempted by public policy.

The public policy of this State has been that units of government are not amenable to wage assignments. See Addyston Pipe and Steel Co. v. City of Chicago, 170 Ill. 580; City of Chicago v. People, 98 Ill. App. 517; Lamb v. Lamb, 256 Ill. App. 226; Opinion of the Attorney General No. 600, issued February 24, 1934 (1934 Ill. Att'y. Gen. Op. 85); and Opinion No. 76, issued August 31, 1953. (1953 Ill. Att'y. Gen. Op. 229.) The reason for this public policy was stated in City of Chicago, supra, at page 520 as follows:

> " * * *
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> It would be in the highest degree harmful to the public that municipal corporations should be permitted to be turned into agencies through which the collection of private debts might be enforced.
>
> A municipal corporation exists for the public welfare only, and it can not be forced into a position by which its duty as to its officials in respect to their salaries shall be, not to pay them in accordance with their lawful right, but to pay the debts which they may be owing to creditors, or their stipend to those to whom they might have assigned it. * * * "

You have drawn my attention to the recent decision of the Illinois Supreme Court in Henderson v. Foster, 59 Ill. 2d 343. That decision held that a park district, which is a unit of local government, is not immune from the operation

of "AN ACT relating to wage deductions for the benefit of creditors and regulating the issuance of deduction orders". (Ill. Rev. Stat. 1973, ch. 62, pars. 71 through 88.) (Wage Deduction Act.) This decision overruled a number of previous decisions and changed the public policy in this State in regard to garnishment of wages. The court noted that the major reason for the immunity of units of government from garnishment was that public policy demanded the prosecution of public business should not be interrupted or inconvenienced. It stated specifically as follows:

> " * * *
>
> Neither our constitution nor our statutes have granted municipal corporations immunity from garnishment. Rather this immunity has in the past been a doctrine created by this court. In Merwin v. City of Chicago (1867), 45 Ill. 133, this court first held that municipal corporations were not subject to garnishment because of public policy. It was felt that a municipal corporation could not be properly turned into an instrument or agency for the collection of private debts because the efficiency of government would thus be impaired and inconvenienced. * * *
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> The Merwin rationale and holding was followed by this court in subsequent situations. In Triebel v. Colburn (1872), 64 Ill. 376, it was held that the treasurer of a municipal corporation was not liable to the process of garnishment or as garnishee in respect to money due a policeman as salary. The

> court there reaffirmed its holding in Merwin, and found that the treasurer as a mere agent of the municipal corporation could not be liable to process. In Addyston Pipe and Steel Co. v. City of Chicago (1897), 170 Ill. 580, this court held that a creditor's bill would not lie against a municipal corporation to enable the complainant to reach a debt owed by the municipality to a third party. * * * "

In abolishing the immunity, the court stated that there was simply no rational basis for distinguishing between a governmental employer and a private employer with respect to the operation of the Wage Deduction Act and noted that suits against local governmental bodies are allowed in tort and in contract. It stated specifically that:

> " * * *
>
> The force of the doctrine of public policy is weakened where the proposed garnishee is liable to be sued generally. (See 38 C.J.S. Garnishment sec. 39(b) (1943).) We have upheld the contractual liability of local governmental entities. (Wall v. Chicago Park District (1941), 378 Ill. 81). In Molitor, tort immunity of local governmental entities had similarly been abolished. Absent some overriding countervailing policy, it is incongruous to allow a direct suit for the recovery of large sums of money from the governmental body and to deny suit in a situation where the public funds are not put in jeopardy. * * * "

The question then is whether there is some overriding countervailing policy which would distinguish wage assignments from garnishments. It has been argued that the wage assignment immunity has also been abolished, at least by implication,

because it can be so easily circumvented by the creditor by obtaining a judgment which would allow him to garnish the debtor's wages. (Ries, David V., 63 Ill. B.J. 530.) Furthermore, there is little distinction between garnishments and wage assignments other than that one is by a court order and the other is voluntary. Public policy creating governmental immunity from both procedures is the same.

However, section 1(a) of article VIII of the Illinois Constitution of 1970 provides that "public funds, property or credit shall be used only for public purposes". There is no question that if units of local government are amenable to wage assignments, the cost of the administration of government will increase and that public funds will be used for the private purpose of collecting private debts. In the Henderson decision the court specifically noted that an employer under the Wage Deduction Act is authorized to take a fee for his administrative costs. (Ill. Rev. Stat. 1973, ch. 62, par. 83(d).) Thus, in the case of garnishments, a unit of local government can collect a fee to cover its costs and there is no use of public funds for a private purpose. There is no provision in "AN

ACT regulating the assignment of wages", *supra*, which allows the employer to collect a fee for his administrative costs. Thus, public funds will be used for a private purpose which is prohibited by the Illinois Constitution of 1970.

Furthermore, non-home rule units of government have only those powers provided by statute. In *Ashton* v. *County of Cook*, 384 Ill. 287, the Supreme Court stated at page 299:

> "* * * County boards can exercise only such powers as are expressly given by law or such as arise by necessary implication from the powers granted or are indispensable to carry into effect the object and purpose of their creation. (*Marsh* v. *People*, 226 Ill. 464; *County of Cook* v. *Gilbert*, 146 Ill. 268.) * * * "

The Illinois Constitution of 1970 did not change this rule of law with respect to non-home rule units. There is no statutory provision which authorizes a non-home rule unit of local government to deduct wages to pay over to an assignee. "AN ACT defining the powers and duties of local governmental agencies * * * to withhold parts of employee * * * compensation * * * " (Ill. Rev. Stat. 1973, ch. 85, pars. 471 *et seq*.) authorizes the withholding of wages only for union and membership dues, premiums for certain insurance programs, purchase of United States Savings Bonds, contributions to the United Fund and

payments to credit unions. Section 6 of this Act (Ill. Rev. Stat. 1973, ch. 85, par. 476) specifically authorizes the local governmental agency making such deductions to receive reimbursement for the cost of withholding. Section 707 of the Illinois Income Tax Act (Ill. Rev. Stat. 1973, ch. 120, par. 7-707) authorizes units of local government to withhold for State income tax. The withholding of Federal income tax is required by Federal statute. (26 U.S.C. sec. 3401 and 3404.) Wage garnishment withholdings are required pursuant to court order.

I, therefore, am of the opinion that non-home rule counties are not amenable to the provisions of "AN ACT regulating the assignment of wages", supra. It is therefore unnecessary to answer your second question which concerns section 3 of the Act. Ill. Rev. Stat. 1973, ch. 48, par. 39.3.

Very truly yours,

A T T O R N E Y   G E N E R A L