

First Supplement to Memorandum 74-61

Subject: Study 39.30 - Wage Garnishment

The attached letter from the President of the California Association of Collectors suggests that the Law Revision Commission recommend legislation to provide a continuing levy for an execution on wages on governmental employees (state and local). The comprehensive wage garnishment statute recommended by the Commission--but defeated in the 1974 Legislature--included such a provision.

The recommendation has merit. However, we encountered some opposition from both state and local governmental agencies on this aspect of our original recommendation. Both state and local public entities were concerned that a continuing levy would cost quite a bit more to the public entity than the present one-shot levy. The local public entities also took the view that the bill should include a substantial appropriation to cover the additional costs the bill would mandate on the local public entities. However, we were able to eliminate this opposition by pointing out the benefits to the employer of the gross earnings withholding scheme (a feature that would permit use of computers in programming the withholding formula and avoid significant costs) and other features of the statute. In fact, after the gross earnings withholding formula aspect of the bill was explained to the representative of one large county, that county withdrew its opposition and the county became hopeful that the bill would be enacted. We also worked closely with the Office of the State Controller and other agencies in connection with the continuing levy and other features of the bill.

The staff believes that it is likely that the recommendation would cause considerable opposition if it were presented as a separate proposal.

We think that this opposition would not exist if the proposal were included in a new recommendation for a comprehensive statute and might not be controversial if it were proposed after the separate staff recommendation for a revision of the wage garnishment exemptions were enacted. We would not want to add the continuing levy proposal to the revision of the garnishment exemptions because we think that the revision of the garnishment exemptions has an excellent chance for enactment and we do not want to jeopardize that reform by adding the continuing levy.

The staff suggests that the Commission not recommend to the 1975 session a revision of the levy procedure for garnishment of earnings of public employees. The California Association of Collectors can sponsor such legislation as its own if it wishes and is in a much better position than the Commission to overcome the opposition to the proposal if it is opposed.

The staff further suggests that the matter of levy procedure on garnishment of earnings of public employees be considered when the other aspects of a comprehensive wage garnishment procedure are considered.

Respectfully submitted

John H. DeMouilly
Executive Secretary

California Association of Collectors

Incorporated

October 23, 1974

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Dear Mr DeMouilly:

Thank you for the copy of the revised attachment law. I will pass it along to my fellow collectors in Nevada. They do not have an attachment law at the present time, but would like to introduce one.

You mentioned that your staff was preparing some recommendations on wage executions that were somewhat less ambitious than AB 101. In my prior letter, I mentioned that C.A.C. and the Clerks Association were still opposed to the general provisions of AB 101. We feel that the present law has eliminated the bulk of the costs to the defendant but still provides for an efficient and economical method for the levying officers and clerks to carry out their duties.

What I would like to suggest in lieu of the staff pursuing a bill similar to AB 101, is changing the provisions of 710 C.C.P. which provides for the execution on wages of government employees.

There are a great many problems that have been cause by that section of law. I think your Commission could come up with changes that could eliminate those problems which would result in less cost to the defendant and also save time and money for the Court Clerks.

The problems have arisen in recent years as a result of many government agencies changing from monthly payrolls to bi-weekly or bi-monthly paydays. Each of the government agencies compute their pay periods differently and have many different policies as to when they will start to withhold monies from an employees paycheck.

The result has been many executions returned with very small amounts such as \$ 10.00 to \$ 15.00 being withheld because the abstract was sent to the government agency at the wrong time to catch the maximum amount for the current pay period. It then becomes necessary to have more abstracts issued which results in more costs to the defendant, the Court and the payroll department of the employer.

If your Commission could propose changing 710 C.C.P. so that the abstract of judgment would be good for 60 or 90 days of wages as opposed to the present one payday, there will be a great deal of costs and time saved for all concerned.

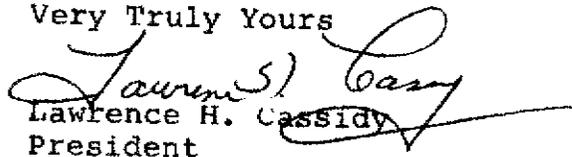
If you need any additional information or statistics, I will be happy to provide what I can.

In the past our Association has had to take a negative stand against some of the Commission's proposals. I hope this can be the first of positive proposals that we can agree on and help create legislation that is progressive.

I would like to detract for one moment to something I found to be rather humorous in 710 C.C.P. Section F. It states that you cannot execute on the salary of the Governor and other elected state officials down to the level of the Attorney General. Can you or any other member of the staff think of any reason why elected state officials should not be subject to wage executions if they do not pay their just debts??? I say this with tongue in cheek.

I'll look forward to seeing you at the meeting of November 14th in Los Angeles.

Very Truly Yours


Lawrence H. Cassidy
President

LHC/cl

cc: Robert Hovard
Executive Comm, CAC