



CCPA-42

December 3, 1970

This is in reply to your letter of August 24, 1970, applying for an exemption from the provisions of section 303(a) of Title III of the Consumer Credit Protection Act for garnishments issued under the laws of the State of South Carolina.

A notice of the application was published in the Federal Register of September 11, 1970 and a period of 30 days was allowed for comments from interested persons. The comments which were received were considered together the application.

The salient features of South Carolina's garnishment provisions are found in section 10-1731, 1962 Code. Under this section, the earnings of the debtor for his personal services at any time within sixty days next preceding the order cannot be applied to the indebtedness when it is made to appear by the debtor's affidavit or otherwise that such earnings are necessary for the use of a family supported wholly or partly by his labor. The garnishment restrictions of Title III apply without limitation as to when wages were earned.

It is noted that no specific earnings exemption is provided in the laws of the State for employees whose earnings are not necessary for the use of families supported by their labor. Also, there is an exception to the head of family exemption by virtue of a proviso "that notwithstanding the limitations set forth in this section, and amount not exceeding fifteen per cent of the judgment debtor's wages, salary, fees or commissions due or to become due under any existing contract of employment may be immediately ordered, in the discretion of the judge, to be so applied" (to the debt) "when the judgment is for food, fuel or medicine accounts, but not more than one hundred dollars may be so applied to any such judgment."

Thus, an individual whose wages are not necessary for family support may be subject to wage garnishment without any limitation. Pursuant to section 10-923 (not submitted by the State for our review), the duty of the officer to whom a warrant of attachment is directed is to "attach... all (the debtor's) personal estate...except such ... as is exempt from attachment, levy or sale by the Constitution". However, the specific wage exemption is spelled out in statutes (Sec. 10-1731) and is not reflected in Article 3, Sec. 28 of the Constitution, as are the personal property and other exemptions. Also, in addition to the specific wage exemption applicable to executions, section 34-41 of the 1962 Code provides a personal property exemption of \$500 for the "head of any family residing in" South Carolina. In the case of persons not the head of a family, personal property consisting of wearing apparel and tools and implements of trade, not to exceed the value of three hundred dollars, is exempt from attachment, levy or sale. Thus, under this provision no personal property exemption which could affect wages is provided for persons who are not the heads of families.

The South Carolina Code section 10-1731, permits garnishment of 15% of all earnings for certain types of debts discussed above, with a maximum of \$100. As you know, the Federal law prohibits garnishment of any of the first \$ 48 per week of disposable earnings, and limits

garnishment of the first \$64 per week of disposable earnings to the amount in excess of \$48. Under the Federal law 25% of the weekly disposable earnings above \$64 may be garnished.

The South Carolina Code contains no definition of "garnishment" or "earnings". It is not clear that all "garnishments" and "earnings" as defined in Title III would be within the purview of the State law. The exemptions available under section 10-1731 of State law must be affirmatively claimed but under Title III there is no such requirement.

In view of these differences between the South Carolina law and the Federal law, and in applying Subpart C of Title 29, Part 870, Code of Federal Regulations (35 F.R.8226), I conclude that the South Carolina law does not provide restrictions on garnishment which are substantially similar to those provided in section 303(a) of Title III of the Consumer Credit Protection Act.

The application for exemption is, therefore, denied.

Part 870.53(b) provides that if an application is denied, a State representative may have an opportunity to request reconsideration.

Although no exemption is granted, we call your attention to section 307 of the CCPA. Section 307 is read as preserving portions of State laws on garnishment which may be more restrictive than the Federal law under particular facts and circumstances, even though the State laws as a whole may be less restrictive.

Sincerely,

Robert D. Moran  
Administrator