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## THE GOVERNMENT AS A GARNISHEE

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The garnishment of monies in the custody of governmental units assumes ever increasing importance as government dispenses more and more of the national income.<sup>1</sup> In 1938 approximately one person in ten received income from

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<sup>1</sup> THE ECONOMIC ALMANAC FOR 1940. National Industrial Conference Board, 247 Park Avenue, New York City, July, 1940, reports: In the United States there are in excess of 182,000 political units of government having the power to levy taxes. Of these governing units, federal, state, and local, during 1938 the federal government alone supplied the income in whole or in part to 12,842,227 persons as follows: the regular government establishment of 2,198,814 persons (including 901,453 pensioners); and the emergency measures supplying income to 10,491,644 persons (including 5,248,796 farmers receiving conservation payments). The number of active employees of all governments for 1938 was 3,788,616, and this group received an estimated compensation of 5,507 million dollars (pp. 359-360.)

Since 1931 federal tax collections per capita have ranged from \$15.24 in 1932 to \$47.17 in 1938, and during the same period the expenditures have ranged from \$28.68 in 1931 to \$69.29 in 1939. The excess of expenditures over general and special account receipts has averaged about \$20.00 per capita each year since 1931 (p. 341).

The increasing portion of the national income which passes through government is presented for selected years since 1799 as follows (pp. 304, 362).

Year	National income in millions	Ratio of government expense to national income
1799	677	0.9
1869	6,827	4.2
1899	15,364	6.5
1915	32,533	6.0
1921	56,689	9.3
1930	72,398	9.8
1932	46,708	15.9
1934	51,560	18.1
1936	65,246	19.7
1938	62,450	19.5

government for past or present services or because of contractual agreements. The aggregate total of money passing through the coffers of the governing units represented 19.5 per cent of the national income, a percentage exceeded only by manufacturing and industry which accounted for an estimated 19.7 per cent.

## I

The desire of a creditor to reach assets belonging to a dilatory debtor in the hands of a third person is very old. The Romans devised a practice to reach such assets; the custom of London allowed a citizen to pursue the effects and credits of a non-resident debtor;<sup>2</sup> and the original states of the Union enacted statutes<sup>3</sup> allowing foreign attachment or garnishment. In 1818 Congress empowered the federal government in suits instituted by it to summons debtors of a corporation as garnishees when the corporation was indebted to the government.<sup>4</sup> Notwithstanding the very long history of the process of garnishment, it is today regarded as a statutory process<sup>5</sup> and as such is subject to the rules of statutory construction.<sup>6</sup>

The earlier laws relating to garnishment or foreign attachment made no reference to employees or officers of the governing agencies. The earliest explicit statute probably was the Pennsylvania act exempting from garnishment the wages and salaries of officers and employees of the government.<sup>7</sup> Thus, in most cases courts must interpret the general attachment or garnishment statutes and apply them to the governing units.<sup>8</sup> Almost invariably the application of the statute and process to the governing agencies has been denied.

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<sup>2</sup> 28 C.J. 1.

<sup>3</sup> May 1784, pp. 137-38. Acts and Laws of Connecticut 1796; Ancient Charters and Laws, Mass. Bay, Ch. 267.

<sup>4</sup> 3 Stat. 443 (1818).

<sup>5</sup> *Freeport Motor Casualty Co. v. Medden*, 354 Ill. 486, 188 N. E. 415 (1933); *Bean v. Ingraham*, 128 Me. 238, 147 Atl. 191 (1929); *Roach v. Henry*, 186 Ark. 884, 56 S.W. (2d) 577 (1933); *Black v. Plumb*, 94 Col. 318, 29 P. (2d) 708 (1934).

<sup>6</sup> *Works & Rhea v. Shaw*, 180 La. 77, 156 So. 81 (1934); *Wallace v. Lawyer*, 54 Ind. 501 (1876); *Nat'l Sec. Corp. v. Price*, 129 Nebr. 433, 261 N.W. 894 (1935).

<sup>7</sup> 1845 Session Laws, Chap. 126, §4, p. 188.

<sup>8</sup> For references to studies of unpaid money judgments, see *Reeves v. Crownshield*, 274 N.Y. 74, 8 N. E. (2d) 283 (1937).

*The Federal Government and its creations as garnishees.*

In an early case, writs were issued by the court of Norfolk County, Virginia, at the insistence of six boarding-house keepers against certain seamen of the frigate Constitution. The writs were laid on money in the hands of the purser due to the seamen for wages. The purser admitted the sums due, but paid the money to the seamen, contending that he was not amendable to the process, whereupon the court entered judgment against him on the attachment. On appeal, Mr. Justice McLean reversed the state court on the ground that a purser cannot be distinguished from any other disbursing agent of the government, and so long as the money remains in the hands of the disbursing officer it is as if it had not been drawn from the treasury of the United States.<sup>9</sup>

Since that date the state decisions have not been in agreement, particularly when the newer federal corporations and administrations have been garnishees. Some of the state courts have treated the federal corporations as a foreign corporation doing business in the state and subject to state garnishment and attachment laws; these courts have interpreted the "to sue and be sued" clause to strip the corporation of governmental immunity. Other states have regarded federal corporations as carrying on governmental functions and have given a limited application to the "to sue and be sued" powers of the corporation and denied the application for garnishment.

The Supreme Court of Arkansas, in *Graves Bros., Inc., v. Lasley et al.*<sup>10</sup> allowed garnishment of an A. A. A. check for crop control. The appellants as plaintiffs below had leased land to the defendant (appellee) for a term, and there was a lien on the crop for rent due. Through a crop control agreement the lessee had plowed under a portion of the crop and was entitled to a check from the Department of Agriculture, which check was in the hands of the local county agent. The prayer was for judgment against the renter, and for the check and options to be impounded, assigned, and subjected to the landlord's lien. The court reaffirmed its holding that the state and subdivisions could not be garnisheed in the action at law, but stated that a creditor's bill in equity to

<sup>9</sup> *Buchanan v. Alexander*, 4 How. 20 (U.S. 1846).

<sup>10</sup> 190 Ark. 251, 78 S.W. (2d) 810 (1935).

compel assignment of a debt would be allowed where, as here, all that remained to be done was the payment of the money.

The Louisiana court, faced with a similar situation in the case of *Works & Rhea v. Shaw*,<sup>11</sup> reached a different conclusion. Plaintiffs holding a judgment against the principal defendant had a writ of garnishment issued to the parish demonstration agent for the state of Louisiana who was also agent for the Secretary of Agriculture of the United States. The agent admitted the indebtedness of the Department of Agriculture to the defendant and also admitted that the sum of this indebtedness was represented by a check in his hands. The amount was due under a cotton "plowing up" agreement. The court granted the garnishee's and defendant's prayer to dismiss the proceedings, which it did on the basis of *Buchanan v. Alexander*,<sup>12</sup> notwithstanding the plaintiff's argument that the government had entered into a private and commercial field of business and "that merchants who supply the farmer on faith of the crop must sit by and see that crop plowed up, which had it matured would have been subject to seizure without having the same right to seize the funds paid as consideration for the destruction of the crop."

During 1936, in the case of *Gill v. Reese*, Ohio declared the H.O.L.C. to be a private corporation and subject to garnishment process within the state notwithstanding the fact that the corporation had characteristics of a public enterprise.<sup>13</sup> The articles of incorporation provided "said Corporation shall have power to sue and be sued, and shall have the powers and immunities of corporations of the United States." The court construed "to sue and be sued" as an unequivocal expression to strip the corporation of its rights and immunities of a sovereign power in relation to suits instituted against it.

But, at the same time, the Supreme Court of Tennessee,

<sup>11</sup> 180 La. Rep. 77, 156 So. 81 (1934).

<sup>12</sup> 4 How. 20 (U.S. 1846); footnote 9 *supra*.

<sup>13</sup> 53 Ohio App. 134, 4 N. E. (2d) 273 (1936). *Accord*: *Haines v. Lone Star Shipbuilding Corp.*, 268 Pa. 92, 110 Atl. 788 (1920), *id.* 275 Pa. 260, 118 Atl. 909 (1922); *Central Market, Inc. v. King et al.*, 132 Neb. 380, 272 N.W. 244 (1937); *H. & P. Paint Supply Co. v. Ortloff*, 159 Misc. 886, 289 N.Y.S. 367 (1936); *McAvoy v. Weber* (H.O.L.C.), 198 Wash. 370, 88 P. (2d) 448 (1939); *Burr v. Heffner*, 289 Mich. 91, 286 N. W. 169 (1939). *See* (1936) 15 Chicago-Kent L.R. 237; (1937) 17 Boston U.L.R. 191; (1938) 2 Minn. L.R. 293.

in *H. O. L. C. v. Hardie & Caudle*<sup>14</sup> was deciding a similar case to the contrary. This court interpreted the H.O.L.C. Act as disclosing neither an express nor an implied intention to subject the corporation to the garnishee process. "By the great weight of authority," said the court, "general provisions of statutes, authorizing garnishment of persons, do not apply to the federal and state governments or their officers or agencies such as counties, cities, and boards and commissions intrusted with administration of governmental affairs. A distinction has been taken wherein the state has divested itself of its character of sovereign and descended to the common level of a commercial and economic adventurer. The H. O. L. C. is a governmental agency and has not divested itself of its character of sovereign and descended to the common level of a commercial and economic adventurer."

The federal Supreme Court denied certiorari in the case of *McCarthy v. U. S. Shipping Board*,<sup>15</sup> in 1932, thus apparently indirectly sanctioning the limited interpretation and application of the conventional "to sue and be sued" clause. This situation was clarified somewhat in 1935 when the court held that the "to sue and to be sued" power included the action of attachment on a judgment against the corporation, because "the liability to suit included by implication the process of attachment."<sup>16</sup> Again in 1939, the court, after commenting on the number of governmental corporations created by Congress with power to sue and be sued,<sup>17</sup> said by way of dicta that the inclusion of the clause was "an indication of the present climate of opinion which has brought governmental immunity from suit into disfavor" and "a definite attitude on the part of Congress which should be given hospitable scope."<sup>18</sup>

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<sup>14</sup> 171 Tenn. 43, 100 S.W. (2d) 238 (1936). See *Walker v. Turner*, 22 Tenn. App. 280, 122 S.W. (2d) 804 (1938); (1937) 32 Ill. L. Rev. 483.

<sup>15</sup> *McCarthy v. U.S. Shipping Board*, 60 App. D.C. 311, 53 F. (2d) 923 (1932); *cert denied*, 285 U.S. 547 (1932); *Shipping Board held as garnishee in Haines v. Lone Star Shipbuilding Corporation*, 268 Pa. 92, 110 Atl. 788 (1920), *id.* 275 Pa. 260, 118 Atl. 909 (1922).

<sup>16</sup> *Federal Land Bank of St. Louis v. Priddy*, 295 U.S. 229 (1935).

<sup>17</sup> *Thurston, Government Proprietary Corporations* (1935) 21 Va. L.R. 351, 465.

<sup>18</sup> *Keifer & Keifer v. R.F.C.*, 306 U.S. 381 (1939). The exemption of the United States and the several states from being subjected as defendants to ordinary actions in the courts has, since the time

Then in *Federal Housing Administration v. Burr*,<sup>19</sup> Mr. Justice Douglas asserted that: "Clearly the words 'sue and be sued' in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. . . . To say that Congress did not intend to include such civil process in the words 'sue and be sued' would in general deprive suits of some of their efficacy. Hence, in the absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used those words in their usual and ordinary sense. State decisions barring garnishment against a public body though it may sue and be sued are not persuasive here as they reflect purely local policies . . . and involve considerations not germane to the problem of amenability to suit of the modern federal corporation. . . . Whether by Michigan law execution under such a judgment may be had is, like the availability of garnishment, a state question. And so far as the federal statute is concerned, execution is not barred. . . . That of course does not mean that any funds or property of the United States can be held responsible for this judgment. Claims against a corporation are normally collectible from corporate assets. That is true here."

By construing the congressional grant to proprietary corporations to include "all civil process", the court has further enlarged the scope of the statutory grant of power "to sue and to be sued." If Congress in the creation of a federal corporation includes the conventional "to sue and be sued"

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of *Cohen v. Virginia*, 6 Wheat. 264 (U.S. 1821) been repeatedly asserted, the principle has never been discussed or the reasons for it given, but it has always been treated as an established policy. The doctrine of non-suability may be based on the theory that the United States is the institutional descendant of the Crown, enjoying its immunities but not its historical privileges, *Langford v. United States*, 101 U.S. 341 (1879); as part of the common law heritage, *Dollar Savings Bank v. United States*, 19 Wall. 239 (U.S. 1873); or on the metaphysical doctrine that there can be no legal right as against the authority that makes the law upon which the right depends, *Kawananakoa v. Polyblank*, 205 U.S. 349 (1906), or by implication, *Principality of Monaco v. Mississippi*, 292 U.S. 313 (1934).

<sup>19</sup> 309 U.S. 242 (1940), *affirming* *Burr v. Heffner*, 289 Mich. 91, 286 N.W. 169 (1939). See also *Sherwood v. U.S.*, 112 F. (2d) 587 (C.C.A. 2d, 1940), *cert. granted* 61 S. Ct. 171 (1940).

clause, the corporate assets are subject to the garnishment, attachment, and execution laws of the jurisdiction in which the corporation is doing business. Arkansas, Michigan, Nebraska, New York, Ohio, Pennsylvania, and Washington have held federal corporations amenable to the garnishee process. The District of Columbia, Louisiana, and Tennessee have held federal corporations immune to garnishment.

Congressional appropriations for specific purposes frequently provide immunity from assignment, attachment, or garnishment. As early as 1792 a statute was enacted declaring the assignments of pensions void.<sup>20</sup> Other statutes have placed the same protection on land grants,<sup>21</sup> adjusted compensation certificates,<sup>22</sup> and civil service employees retirement pay.<sup>23</sup> The same protection has been accorded funds made available for relief clients or for projects which are designed primarily to reduce unemployment.<sup>24</sup> Today the Secretaries of War,<sup>25</sup> Navy, Commerce, Labor, Interior, and Agriculture have statutory authority<sup>26</sup> to issue regulations setting out the conditions under which and the procedure whereby employees of their respective departments may assign their pay. To this extent the federal government has restricted the protection maintained by the courts.

*The states and their creations as garnishees.*—Although the present day tendency is toward explicit legislative enactment and the garnishment of governmental units, early judicial action was without legislative guidance. During the nineteenth century, whenever the general attachment or garnishment law did not expressly include or exclude governmental employees, the courts by an overwhelming majority denied the process. Different reasons and combinations of reasons were given. First, the sovereign cannot be sued without its consent.<sup>27</sup> Second, the garnishee process is satutory

<sup>20</sup> 1 Stat. 245 (1792); 40 Stat. 442 (1917-1919); 38 U.S.C.A. § 129 (1934).

<sup>21</sup> 17 Stat. 606, §5 (1873).

<sup>22</sup> 38 U.S.C.A. §643 (1934).

<sup>23</sup> 5 U.S.C.A. §729 (1934).

<sup>24</sup> 13 C.F.R. 163—Exec. Order No. 7046.

<sup>25</sup> Army Regulations No. 35-1360.

<sup>26</sup> 5 U.S.C.A. §§529, 595 (1934); 10 U.S.C.A. §891 (1934); 48 U.S.C.A. §171 (1934).

<sup>27</sup> U.S. Const. Am. XI; *Dollar Savings Bank v U.S.*, 19 Wall. 239 (U.S. 1873); *Leach v. Am. Surety Co.*, 210 Mo. App. 203, 242 S.W. 983 (1922); *State v. Cook*, 171 Tenn. (7 Beeler) 605, 106 S.W. (2d) 858 (1937).



and, as such, the statute must be strictly construed.<sup>28</sup> Third, property or money in the hands of the government is in *custodia legis*<sup>29</sup> and cannot be diverted from its legal purpose. And fourth, *public policy*,—a category consisting of miscellaneous reasons believed to promote the general welfare. A closer scrutiny of the public policy and general welfare consideration shows that (a) municipal corporations are organized for a specific purpose and as such cannot be garnisheed;<sup>30</sup> (b) the public welfare is superior to individual convenience;<sup>31</sup> (c) the public service would suffer if the officials were forced to leave their duties and appear in court;<sup>32</sup> (d) the garnishee process is susceptible of mischievous use;<sup>33</sup> and (e) “if the remuneration should be reduced the officer would be deprived of the support and there would arise a hazard of his being driven to an inappropriate meanness of living, of his being harassed by the worry of straightened circumstances, and tempted to engage in unofficial labor, and the likelihood of his falling off in that official interest and vigilance which the expectation of pay keeps alive.”<sup>34</sup>

A survey of current statutes and court decisions indicates two definite trends: first, state legislatures are stating their garnishment policy in specific terms; and second, the number of states favoring garnishment of money due public workers are increasing.<sup>35</sup>

<sup>28</sup> *Roach v. Henry*, 186 Ark. 884, 56 S.W. (2d) 577 (1933); *Black v. Plumb*, 94 Colo. 318, 29 Pac. (2d) 708 (1934); *Works & Rhea v. Shaw*, 180 La. Rep. 77, 156 So. 81 (1934); *Wallace v. Lawyer*, 54 Ind. 501 (1876); *Nat'l Surety Corp. v. Price*, 129 Neb. 433, 261 (N.W. 894 (1935)); *Walker v. Cook*, 129 Mass. 577 (1880).

<sup>29</sup> *First Nat'l Bank v. Mays*, 175 Ark. 542, 299 S.W. 1002 (1928); *Millison v. Fisk*, 43 Ill. 112 (1867).

<sup>30</sup> *Hawthorne v. St. Louis*, 11 Mo. 60 (1847); *Dow v. Irwin*, 21 N.M. 576, 157 Pac. 490 (1928).

<sup>31</sup> *Boyd et al v. Mahone*, 142 Va. 690, 128 S.W. 259 (1925).

<sup>32</sup> *Ward v. County of Hartford*, 12 Conn. 404 (1838).

<sup>33</sup> *McMeeken v. The State*, 9 Ark. 553 (1847).

<sup>34</sup> *Crown Oil Co. v. Eitner*, 16 N.J. Misc. 330, 199 Atl. 901 (1938); see *State v. Hawkins*, 44 Ohio 98, 5 N.W. 228 (1886); but “one would think it was in accordance with public policy to see that public officers did pay their debts”, *Cooper v. Schooley*, 26 Ohio App. 313, 159 N.E. 727 (1927).

<sup>35</sup> If the state permitted garnishment of any one or more of the commonly accepted governing units such as the state, county or municipality, the state was counted as one permitting the process. In this class are included states ranging from those permitting garnishment of the *earned income of employees of local governments only* to states legalizing a *continuing levy on officials and employees of the state and all its subdivisions*. If, however, au-

Of the 48 states, 31 have statutes which permit garnishment in varying degrees against government officials and employees, and the remaining 17 deny the process either by specific enactments or by judicial interpretation of the general garnishment and attachment laws. Two states, Illinois and Indiana, had enacted statutes which would have included municipal corporations or local governments, but in each instance the law was declared unconstitutional. The Illinois law subjecting salaries of employees of certain local governments to garnishment was declared unconstitutional as special legislation because it did not include all units of the same class created under the general laws of the state.<sup>36</sup> In Indiana the clause permitting garnishment of municipal corporations fell when the garnishee law of 1925 was declared void because of unconstitutional exemptions.<sup>37</sup> An attempt was made by the legislature of Tennessee to include state workers, but the law, in so far as state workers were concerned, was declared invalid because the statutory procedure did not follow the constitutional provisions for suit against the state.<sup>38</sup>

In some states where the interpretation of the statute excludes governing bodies from the garnishee process, means have been found to circumvent the immunity. Arkansas has contributed "equitable garnishment,"<sup>39</sup> and Missouri has adopted it to limit the application of the statute forbidding garnishment of a public corporation.<sup>40</sup> Assignment is an alternative offered by the Minnesota and Wisconsin statutes, and mandamus has been used to force the employee judgment debtor to honor his financial obligations.<sup>41</sup>

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thority was found which denied the process of garnishment to public workers, other than relief expenditures, the state was recorded as denying the process.

For a complete tabular analysis, see Appendix, *infra* p. 412.

<sup>36</sup> *Badenoch v. Chicago*, 222 Ill. 71, 78 N.E. 31 (1906).

<sup>37</sup> 1925 Acts, Ch. 61, p. 204; IND. STAT. ANN. (Burns, 1933) §2-4501; *Martin v. Loula*, 208 Ind. 346, 195 N.E. 881 (1935); 10 Ind. L. J. 522.

<sup>38</sup> *State v. Cook*, 171 Tenn. (7 Beeler) 605, 106 S.W. (2d) 868 (1937).

<sup>39</sup> (1933) 39 W. Va. L. Q. 224-242.

<sup>40</sup> *DeField v. Harding Dredge Co.*, 180 Mo. App. 563, 167 S. W. 593 (1914), *but see* *Nancy v. LePage*, 341 Mo. 1039, 111 S. W. (2d) 25 (1937).

<sup>41</sup> *Pherson v. Young*, 69 Kan. 655, 77 Pac. 693 (1904); *Boal Floral Co. v. Coyne*, 158 Misc. 13, 284 N.Y.S. 960 (1936); *Reeves v. Crownshield*, 274 N.Y. 74, 8 N.E. (2d) 283 (1937); MASS. GEN. LAWS (1932) c. 224 §16; N.Y. PRACTICE CODE 793; N. J. REV. STAT. (1937) 2:26-181.

The statutory authority permitting garnishment of government workers reveals divergent methods of incorporating the public worker into the garnishment and attachment process. By one method attachment and garnishment applies to all employees and officers of the state or local governments with the same force, effect, exemptions, and limitations as are now applicable to other individuals.<sup>42</sup> Another method, in addition to incorporating governmental employees into the existing garnishment and attachment statutes, makes added special provisions to fit the garnishment procedure into the fiscal practices of the state and its public corporations.<sup>43</sup>

The third method, of which California, Washington, and Wisconsin are the outstanding representatives, provides a separate and distinct procedure specifically applicable to employees and officers of the government. In California, when a judgment for payment of money is rendered by any court of the state against a defendant to whom money is owed by the state or subdivision thereof, the judgment creditor may file—upon the payment of a fee—an authenticated abstract or transcript of such judgment together with an affidavit stating the exact amount due and unpaid, with the proper state or local officer who in turn delivers to the court the money due the judgment debtor.<sup>44</sup> The state or local official deducts any amounts due the government and is not liable for failure to perform the duties imposed by the act if reasonable diligence is exercised. The court then pays the balance—less amounts exempt from execution—to the judgment creditor and the remainder to the judgment debtor. The Washington statute provides that no regular judgment shall be entered against a municipal corporation, but the judge of the superior or justice court shall by written order direct the paying officer to pay the judgment creditor any sums, less legal exemptions, due the judgment debtor.<sup>45</sup> Under the Wisconsin law the judgment creditor files a certified

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<sup>42</sup> Colorado, Delaware, Kansas, Kentucky, Michigan, Nebraska, Tennessee, Virginia, West Virginia. In subsequent footnotes where references are made to states for citation of the statute see Table I of the Appendix.

<sup>43</sup> Alabama, Minnesota, Mississippi, North Dakota, South Dakota, Wisconsin.

<sup>44</sup> Cal. PROCEDURE & PROBATE CODE (Deering, 1937) §710.

<sup>45</sup> WASH. REV. STAT. ANN. (Remington, 1932) §§ 680-2.

copy of the judgment with the proper government official whose duty it is to pay the creditor such sums as are available until the judgment is satisfied.<sup>46</sup>

*Interpretation and administration of state statutes.*—To comply with constitutional mandates, some states<sup>47</sup> must exclude officials whose compensation is protected by the state constitution. However, in Arizona, Nebraska, and Washington, the courts have ruled that the garnishment of salaries of governmental workers does not violate the constitutional provision which provides that the salaries shall not be increased or decreased after election or during the term of office.<sup>48</sup>

In the majority of the states permitting governmental units to act as garnishees, the law applies to *all state and local officials and employees*. However, in Kentucky, Virginia, and Delaware the law applies to *employees* only,<sup>49</sup> but the Delaware statute defines an employee to include every person performing any labor and work for the government, and seemingly such a provision can be construed to include officers.<sup>50</sup> The Minnesota law applies to local governments and to the State Highway Commissioner.<sup>51</sup> In Tennessee, Vermont, and West Virginia the law specifically limits garnishment to the *officers and employees* of the subdivisions of the state generally referred to as local governments.<sup>52</sup> The Texas home rule statute make it possible for cities, towns, and villages to provide, if they so desire, that no funds shall be subject to garnishment.<sup>53</sup>

In the administration of the state's functions there are numerous political subdivisions and the extent to which they share immunity from the garnishee process depends upon the state statutes and the interpretation given by the courts. It has been held that the term municipal corporation in

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<sup>46</sup> WISC. STAT. (1939) §§ 304-21.

<sup>47</sup> California, Colorado, Virginia.

<sup>48</sup> State v. Surety Finance Co., 42 Ariz. 42, 21 P. (2d) 929 (1933); Dept. of Banking v. Foe, 136 Neb. 422, 286 N. W. 264 (1939); Hanson v. Hodge, 92 Wash. 425, 159 Pac. 383 (1916).

<sup>49</sup> KY. STAT. (Carroll, 1936) §1701b; VA. CODE (Michie, 1936) §§6559, 6561.

<sup>50</sup> Delaware Laws 1939, c. 152, p. 315.

<sup>51</sup> MINN. STAT. (Mason, 1927) §§9360-1, 9364.

<sup>52</sup> TENN. CODE ANN. (Michie, 1938) §7714; VERMONT LAWS 1933, c. 76, § 1762; W. VA. CODE ANN. (Michie, 1937) § 3910 (1).

<sup>53</sup> TEXAS STAT. (Vernon, 1936) Art. 1175 (5).

garnishment statutes does not include an irrigation district,<sup>54</sup> a public corporation,<sup>55</sup> or a county,<sup>56</sup> as a county is a subdivision of the state and not a body politic, corporation, or quasi-corporation.<sup>57</sup> If the local government partakes of the sovereign,<sup>58</sup> or is performing service of a character important to public welfare,<sup>59</sup> garnishment will not lie against it unless the statute so provides, but if the governing unit is such that garnishment does not invoke the protection of public policy,<sup>60</sup> or the status of the fund has become such that protection is not needed,<sup>61</sup> or the state is carrying on business independent of its sovereignty, garnishment will be sustained.<sup>62</sup> However, the Liquor Control Commission of Michigan has been held to be a state agency and not subject to an action in garnishment except as provided by the statute allowing garnishment against the state.<sup>63</sup>

The state courts have been confronted with the application of their garnishment laws to workers of the federal government and have held that the state laws do not apply.<sup>64</sup> New York, however, while admitting the inapplicability of the state garnishment law to federal workers, has held that money once paid to a citizen of New York, is subject to New York law, and failure to obey the order makes the employee liable to citation for contempt.<sup>65</sup>

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<sup>54</sup> Doty v. Saddler, 151 Wash. 542, 276 Pac. 891 (1929).

<sup>55</sup> McAvoy v. Weber, 198 Wash. 370, 88 P. (2d) 448 (1939).

<sup>56</sup> Hoyt v. Paysee, 51 Nev. 114, 269 Pac. 607 (1928); So. Ohio Finance Co. v. Wahl, 34 Ohio App. 518, 171 N.E. 369 (1930).

<sup>57</sup> Bazzoli v. Larsen, 40 Ohio App. 321, 178 N.E. 331 (1931). *But see* Fitzgibbon v. DeChant, 58 Ohio App. 453, 16 N.E. (2d) 794 (1933).

<sup>58</sup> Prudential Mtge. & Inv. Co. v. New Britain, 123 Conn. 390, 195 Atl. 609 (1937).

<sup>59</sup> Citizens Discount & Inv. Co. v. Canatella, 6 La. App. 147 (1927).

<sup>60</sup> City of Laredo v. Nalle, 65 Tex. 359 (1886); Bray v. Wallingford, 20 Conn. 416 (1850); Davis v. Rain, 26 Ala. App. 380, 161 So. 107 (1935); Seymour v. Over River Sch. Dist., 53 Conn. 502, 3 Atl. 552 (1885). *Contra*: Weiser v. Payne, 110 Cal. App. 378, 294 Pac. 407 (1930), statute amended 1933 Acts, Ch. 328, p. 906; 1937 Acts, Ch. 211, p. 506.

<sup>61</sup> Orchard & Wilhelm Co. v. North, 135 Nebr. 39, 280 N.W. 272 (1938).

<sup>62</sup> U.S. v. Pacific Forwarding Co., 8 F. Supp. 647 (W.D. Wash. 1934).

<sup>63</sup> Berger v. Schenley Corp. 277 Mich. 159, 269 N.W. 128 (1936).

<sup>64</sup> Crown Oil Co. v. Eitner, 16 N.J. Misc. 330, 199 Atl. 901 (1933); White v. Wright, 151 Okla. 93, 1 P. (2d) 668 (1931).

<sup>65</sup> Bool Floral Co. v. Coyne, 158 Misc. 13, 284 N.Y.S. 960 (1936); Reeves v. Crownshield, 274 N.Y. 74, 8 N.E. (2d) 283 (1937). *See also* MASS. GEN. LAWS (1932) c. 224, § 16; N.J. REV. STAT. (1937) 2:26-181.

Where garnishment is allowed, the most common practice is to permit it only against money due for services already performed. The terminology of the statutes varies widely. The usual phraseology includes "any fund whether derived from appropriations, fees, licenses, special taxes, or otherwise"<sup>66</sup>; "money due . . . except commissions, percentages or allowances"<sup>67</sup>; "any credits or other personal property belonging to a defendant"<sup>68</sup>; "money, credits or other property belonging to or due and owing"<sup>69</sup>; "salary and wages"<sup>70</sup>; "earnings already earned by personal services"<sup>71</sup>; or "property (real or personal) belonging to creditor's debtor".<sup>72</sup>

The statutes limiting the garnishment order to money now due or already earned usually require the judgment creditor to secure several orders before he can satisfy the debt. The better practice is to have the garnishment order serve as a continuing levy until the full judgment is paid.<sup>73</sup>

Except in California, Washington, and Wisconsin, service of the summons or writ of garnishment or attachment is made on the officer of the governing body responsible for auditing or paying the debtor-employee. The officer is required to answer; the answer can be made personally or by mail or deposition,<sup>74</sup> and the answer in some instances is final and conclusive.<sup>75</sup> If the officer refuses to answer he is subject to mandate.<sup>76</sup> If the officer fails in performing his duty, he or his bondsmen are personally liable<sup>77</sup> for the failure or negligence, but no judgment in default can be entered against the governing body.<sup>78</sup>

<sup>66</sup> Colorado.

<sup>67</sup> Alabama.

<sup>68</sup> Idaho, Utah.

<sup>69</sup> Montana.

<sup>70</sup> Alabama, Nebraska, Minnesota, New Hampshire, New Mexico, New York, Tennessee, Virginia, West Virginia; *Walker v. Turner*, 22 Tenn. App. 280, 122 S.W. (2d) 804 (1938).

<sup>71</sup> Nebraska.

<sup>72</sup> North Dakota.

<sup>73</sup> This is the practice in New York, New Jersey, Wisconsin. But see *Fox v. Miller*, 173 Tenn. (9 Beeler) 453, 121 S.W. (2d) 527 (1938).

<sup>74</sup> Colorado, Minnesota, Nebraska, New Mexico, Oklahoma, Virginia.

<sup>75</sup> Utah, South Dakota.

<sup>76</sup> Alabama, Colorado.

<sup>77</sup> Arizona, Oklahoma. *Contra*: South Dakota; *reasonable diligence required*, California.

<sup>78</sup> Mississippi; *Commissioner v. City Nat'l Bank*, 183 Okla. 137, 80 P. (2d) 627 (1938).

After judgment or the filing of the abstract or transcript,<sup>79</sup> the money is paid into court for distribution<sup>80</sup> or the disbursing officer may pay to the judgment creditor.<sup>81</sup> The principal defendant cannot bring an action against the garnishee pending the final determination of the garnishment proceedings, and if the garnishment order is issued, the garnishee by paying the plaintiff liquidates the obligation to the principal defendant to the extent of the order. The judgment debtor may make an assignment of his earnings,<sup>82</sup> but in case of assignment to one creditor and garnishment by another creditor the garnishment order is superior to the assignment.<sup>83</sup>

## II

A sufficient number of states now authorize garnishment of the income of public workers and some have been doing so for sufficient time to enable an objective determination of its actual interference with the transaction of public business.<sup>84</sup> The procedures of California, Washington, and Wisconsin, in which special methods have been adopted to apply to public workers, appear to be superior to those of other states. Not until after judgment is the governmental unit involved. Then the officer pays into the court or to the judgment creditor

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<sup>79</sup> California, Washington, Wisconsin.

<sup>80</sup> Alabama, California, Colorado, Nebraska, New Hampshire.

<sup>81</sup> Washington, Wisconsin.

<sup>82</sup> Minnesota.

<sup>83</sup> Wisconsin.

<sup>84</sup> There are topics associated with a study of garnishment which are beyond the scope of this study; for a discussion of the *situs* of the debt see, *Stone v. Drake*, 79 Ark. 384, 96 S.W. 197 (1906); *St. Louis S.W. Ry. Co. v. Vanderberg*, 91 Ark. 252, 120 S.W. 993 (1909); *Arlington Trust Co. v. LeVine*, 291 Mass. 467, 197 N.E. 195 (1935); the nature of garnishment being *in rem* or *in personam* see, *Zuhlke v. Prudential Ins. Co.* 244 App. Div. 549, 279 N.Y.S. 833 (1935); the union of *law and equity procedure* see, *Brown v. First Nat'l. Bank*, 271 Ill. App. 424 (1934); *Cook, Powers of Courts of Equity* (1915) 15 Col. L. Rev. 37, 106, 228; the *abuse of process* see, *Bowen v. Morris*, 219 Ala. 689, 123 So. 222 (1929); *Rock v. Abrashin*, 154 Wash. 51, 280 Pac. 740 (1929); interpretation of the statutory term *persons or corporations* see, *Wallace v. Lawyer*, 54 Ind. 501 (1876); *Atty. Gen. v. Hawkins*, 44 Ohio 98, 5 N.E. 228 (1886); *Chicago v. Hasley*, 25 Ill. 485 (1861); *Ohio v. Helvering*, 292 U.S. 360 (1934); and *actions against the sovereign* see, *Dollar Sav. Bank v. U.S.*, 19 Wall. 239 (U.S. 1879); *Leach v. Am. Surety Co.*, 210 Mo. App. 203, 242 S.W. 983 (1922); *State v. Cook*, 171 Tenn. (7 Beeler) 105, 106 S.W. (2d) 858 (1937); *Keifer & Keifer v. R.F.C.*, 306 U.S. 331 (1939).

any sums not specifically exempted, and upon a single order may continue to pay as funds become due to the debtor employee until the claim is liquidated. The plan of statutory assignment of governmental workers' salaries seems to work satisfactorily as employed in the case of certain federal employees of the departments of War, Navy, Commerce, Labor, Interior, and Agriculture.<sup>85</sup>

A majority of the states have removed governmental immunity by amending their existing garnishment laws. Though in many respects not as satisfactory as the California procedure, this method is attractive because amendment is always easier than the enactment of new legislation. If the amendatory process is followed, however, exact distinctions should be made between private and public garnishment. Both immunity and garnishment statutes are always strictly construed. There is need not only for exactness but also for sufficient flexibility to include new governmental units as they are created. In some states, constitutional problems involving suits against the state, the change in official salaries during the term, class legislation and due process need consideration. The state must provide for concise, consummate, and constitutional procedure.

With the great increase in federal money payments today, perhaps the most urgent need is a public garnishment procedure uniform throughout the states. It may be hoped that the National Conference of Commissioners of Uniform State Laws will present a Public Garnishment Law comparable to their great contributions to the law of sales and negotiable instruments.

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<sup>85</sup> Footnotes 25 and 26, *supra*. *But see* Fox v. Miller, 173 Tenn. (9 Beeler) 453, 121 S.W. (2d) 527 (1938); Schwcnck v. Wyckoff, 46 N. J. Eq. 560, 20 Atl. 259 (1890).



APPENDIX  
GARNISHMENT OF THE STATE OR ITS SUBDIVISIONS

State	Garnishment in whole or in part	Garnishment denied
Alabama	1928 Code. Sec. 8060, 8088 to 8093	
Arizona	1929 Laws. Ch. 50, p. 156	
Arkansas		First Nat'l. Bank v. Mays 1 Ark 542, 299 S.W. 1002 (192
California	1929 Code and Gen. Laws. Sec. 710, p. 2246; 1937 Deering Proc. Code. 710	
Colorado	1927 Laws. Ch. 112, p. 374	
Connecticut		Prudential Mtge. & Inv. Co. New Britain 123 Conn. 390, 1 Atl. 609 (1937).
Delaware	1939 Laws. Ch. 152, p. 315	
Florida		Duval Co. v. Charleston Lumbr Co. 45 Fla. 256, 33 So. 5 (1903); Tyler v. Ackerman Fla. 485, 96 So. 838 (1923).
Georgia		1933 Ga. Code 46-206.
Idaho	1932 Code. 6-507, 6-521.	
Illinois		Merwin v. Chicago 45 Ill. 1 (1867); Badenoch v. Chicago 2 Ill. 71, 78 N.E. 31 (1906).
Indiana		Wallace v. Lawyer 54 Ind. 8 (1876); Martin v. Loula 208 Ind. 346, 195 N.E. 881 (1935).
Iowa		1939 Code. Ch. 513, Sec. 121.
Kansas	1935 Corrick Gen. Stat. 60-962	
Kentucky	1936 Carroll's Ky. Stat. 1701b	
Louisiana		1927 Practice Code 647; 1932 I Civ. Code. Art 1922; 1932 Sessi Laws, Act 183, p. 575.
Maine		1930 Rev. St., Ch. 100, Sec. 8 Clark v. Clark 62 Me. 255 (187
Maryland		Baltimore v. Root 8 Md. (1855); Hughes v. Svoboda 1 Md. 440, 178 Atl. 108 (1935).

- Massachusetts 1932 Gen. Laws (Ter. Ed.) *Mass.* Ch. 224, Sec. 16; 1933 Ann. Laws. Vol. 8, Ch. 246, Sec. 32.
- Michigan 1929 Comp. Laws, Ch. 266, Sec. 14902.
- Minnesota 1927 *Mason's Minn. Stat.* Ch. 77, Secs. 9360-1, 9364.
- Mississippi 1930 Ann. Code, Sec. 1838; 1936 Laws. Ch. 321, p. 601.
- Missouri 1929 Rev. Stat. 1398; *DeField v. Dredge Co.* 180 Mo. App. 563, 167 S.W. 593 (1914).
- Montana 1935 Mont. Rev. Code. Ch. 44, Sec. 9294.
- Nebraska 1929 Comp. Stat. Ch. 20, Sec. 1012; 1937 Comp. St. 8-1130.
- Nevada 1929 *Hillyer's Comp. St.* 8710.
- N. Hampshire 1926 Pub. Laws, Ch. 356, Sec. 20; 1939 N.H. Laws, Ch. 202, p. 281.
- New Jersey 1937 Rev. Stat. Title 2, Ch. 26, Secs. 181 and 185.
- New Mexico 1929 Statutes Ann. Sec. 59-127.
- New York 1930 *Cahill's Cons. Laws*, Ch. 57, Sec. 2a; Civil Practice Act, Sec. 793.
- No. Carolina *Swepson v. Turner* 76 N.C. 115, 56 ALR 604 (1876), but see 1939 *Michie's Code*, Secs. 819, 1410.
- No. Dakota 1929 Laws, Ch. 188, p. 258.
- Ohio 1938 *Page's Ohio Code*, Secs. 10273, 11725-1, 11728-1, 11760, and 11829.
- Oklahoma 1925 Laws, Ch. 33, Sec. 1, p. 51; 1939 Laws, Ch. 3, Sec. 1, p. 1.
- Oregon 1909 Gen. Laws, Ch. 11, p. 51; 1930 Code Ann. 3-606; *Graf. v. Wilson* 62 Or. 476, 125 Pac. 1005 (1912).
- Pennsylvania 1845 Session Laws, Ch. 126, Sec. 4, p. 188.
- Rhode Island *Tucker v. Pollock* 21 R. I. 317, 43 Atl. 369 (1899); 1938 Gen. Laws R.I., Ch. 557, but see *Wilson v. Lewis* 10 R.I. 285 (1872).

So. Carolina	1932 S. Car. Code, Sec. 3024.
So. Dakota	1939 S. Dak. Code 37-2801.
Tennessee	1938 Michie's Tenn. Code, Sec. 7714.
Texas	1936 Vernon's Texas St. A1 1175 (5)
Utah	1933 Rev. St., Ch. 19, Sec. 104-19- 25
Vermont	1933 Public Laws, Ch. 76, Sec. 1762
Virginia	1936 Va. Code, Ch. 274, Secs. 6559, 6561
Washington	1931 Rem. Rev. St., Title 5, Ch. 2, Sec. 680-1; 1933 Laws Ch. 15, p. 136
W. Virginia	1937 W. Va. Code, Sec. 3910(1)
Wisconsin	1939 Wisc. St., Sec. 304-21
Wyoming	1931 Wyo. Rev. St. 89-3311