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A Changing Public Policy: Garnishment of Municipal Corporations in Illinois - Henderson v. Foster

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NOTES

A CHANGING PUBLIC POLICY: GARNISHMENT OF MUNICIPAL CORPORATIONS IN ILLINOIS —*HENDERSON V. FOSTER*

By reason of court-created doctrine, municipal corporations in Illinois had been exempt from the garnishment process for over a century.[1] In *Henderson v. Foster*,[2] the Illinois Supreme Court abolished this exemption and expressly overruled all prior decisions to the contrary.[3] The original freedom from garnishment was established for reasons of public policy in *Merwin v. City of Chicago*.[4] This earlier court had decided that a municipal corporation should not be required to spend any of its resources on an individual's garnishment suit because such an expenditure, if allowed, would burden or inconvenience the municipal corporation in its operations for the public good.[5] The *Henderson* court appar-

1. Henderson v. Foster, 59 Ill.2d 343, 348, 319 N.E.2d 789, 792 (1974).

2. 59 Ill.2d 343, 319 N.E.2d 789 (1974).

3. *Id.* at 351, 319 N.E.2d at 793. In First Finance Co. v. Pallum, 62 Ill.2d 86, 338 N.E.2d 876 (1975), the Illinois Supreme Court held that the State of Illinois is not immune from garnishment proceedings brought under the Wage Deduction Act. Therefore, under the *Henderson* and *Pallum* decisions, there is no governmental unit in Illinois which can be said to enjoy an exemption or immunity from garnishment.

4. 45 Ill. 133 (1867) (holding that it was correct to discharge a garnishment summons against the City of Chicago without answer since a municipal corporation was not liable to the process of garnishment).

5. *Id.* at 135-36. In support of its decision, the court in *Merwin* noted its reliance on a case decided some six years earlier, City of Chicago v. Hasley, 25 Ill. 485 (1861). In *Hasley*, a judgment had been entered against the City of Chicago and the defendant had sued the city for an execution on the judgment. In ruling that an execution could not legally issue against Chicago, the court emphasized the distinct public character of the municipal corporation. The court concluded that the property and tax moneys collected by the municipal corporation could not be liable to seizure or sale, since "the power, if conceded, to seize the property of the [municipal] corporation would involve the right to seize its revenues, and this involves the right to destroy the corporation." 25 Ill. at 488. In *Merwin*, the court continued with the public policy theme presented in *Hasley* and concluded:

> [The question presented] must be decided as a question of public policy. . . . To permit the great public duties of this [municipal] corporation to be imperfectly performed, in order that individuals may the better collect their private debts, would be to pervert the great objects of its creation.

45 Ill. at 135. Subsequent Illinois cases followed *Merwin* and *Hasley*, firmly establishing the exemption of Illinois municipal corporations from garnishment. *See* Addyston Pipe & Steel Co. v. City of Chicago, 170 Ill. 580, 48 N.E. 967 (1897); Triebel v. Colburn, 64 Ill. 376 (1872); Quitsow v. Hennessey, 338 Ill.App. 176, 86 N.E.2d 836 (1st Dist. 1949).

ently found, however, that public policy had changed, making municipal corporations amenable to garnishment for the public good.[6]

The plaintiff in *Henderson* had secured a judgment against her former husband for child support payments awarded under a prior court decree. Pursuant to the Wage Deduction Act,[7] a wage deduction summons was subsequently issued to the former husband's employer, the Urbana Park District. The Park District filed a motion to quash the summons, arguing that as a municipal corporation organized and operating under the Park District Code,[8] it was not subject to the garnishment process.[9] The trial court quashed the summons on the employer's motion and denied plaintiff's motion for a rehearing. The appellate court dismissed plaintiff's appeal.[10] The Illinois Supreme Court found merit in the plaintiff's arguments and reversed both the order of the trial court and the appellate court's dismissal of the appeal.[11]

The plaintiff in *Henderson* contended that the underlying premises of sovereign immunity and of the public policy exemption involved here were basically the same, and that therefore the fate of the former should

6. 59 Ill.2d at 351, 319 N.E.2d at 793. *See* notes 43-45 and accompanying text *infra*.

7. ILL. REV. STAT. ch. 62, §§71-88 (1975) (detailing the garnishment-type procedures applicable to wages only).

8. ILL. REV. STAT. ch. 105, §§1 *et seq.* (1975).

9. Brief for Appellee at 2-5, Henderson v. Foster, 15 Ill.App.3d 133, 304 N.E.2d 97 (4th Dist. 1973). Based on the relevant statutory language, municipal corporations would appear to be subject to garnishment, for the Illinois Wage Deduction Act, ILL. REV. STAT. ch. 62, §74 (1975), provides for the issuance of a wage deduction summons to any "person" named as employer, and the Illinois Statutory Construction Act, ILL. REV. STAT. ch. 131, §1.05 (1975), states that the term "person" is to be applied "to bodies politic and corporate as well as individuals." The *Henderson* court took note of these statutory provisions and concluded that there was no statutory exemption from garnishment given to municipal corporations; rather, the exemption was the result of court-created doctrine. 59 Ill.2d at 347-48, 319 N.E.2d at 791-92.

10. Henderson v. Foster, 15 Ill.App.3d 133, 304 N.E.2d 97 (4th Dist. 1973).

11. 59 Ill.2d at 351, 319 N.E.2d at 793-94. In addition to the primary issue of a municipal corporation's liability for garnishment, there was a procedural question as to whether the trial court's order to quash the summons or its subsequent denial of the motion for rehearing were final and appealable orders. The appellate court in *Henderson* held that neither order was final and appealable. 15 Ill.App.3d at 135, 304 N.E.2d at 99. As part of its opinion in *Henderson*, the Illinois Supreme Court held that the Park District's motion to quash should have been treated as a motion for the involuntary dismissal of the action under section 48 of the Civil Practice Act, ILL. REV. STAT. ch. 110, §48(1)(i) (1975). The Wage Deduction Act provides that appeals are "taken from a final judgment or order of the court in a like manner as in other civil cases." ILL. REV. STAT. ch. 62, §86 (1975). Therefore, by granting what was in effect a motion for involuntary dismissal, the trial court had entered a final and appealable order according to Illinois Supreme Court Rule 273, ILL. REV. STAT. ch. 110A, §273 (1975). 59 Ill.2d at 346, 319 N.E.2d at 791.

determine the validity of the latter.[12] The court, by clear implication, agreed with the plaintiff's argument and extended it by also considering the premise upon which local governmental immunity was based. The court suggested that an examination of *Molitor v. Kaneland Community Unit District No. 302*[13] and the arguments which had been presented therein in support of governmental immunity[14] would demonstrate the similarity between the rationale which had been used to support the immunity of local governmental units from tort liability and the rationale which had been used to support the exemption of municipal corporations from garnishment.[15] The court concluded that because the Illinois courts had held that municipal corporations were no longer immune to suit in tort and contract,[16] it would be illogical to continue to exempt them from liability to garnishment proceedings.[17]

It should be noted that the *Merwin* decision, as well as those cases from other jurisdictions in accord with the general weight of authority,[18]

12. Brief for Appellant at 4-10, Henderson v. Foster, 59 Ill.2d 343, 319 N.E.2d 789 (1974). Appellant specifically argued that because of the recent constitutional abolition of sovereign immunity, public policy should no longer exempt municipal corporations from garnishment because the foundations for the exemptions from garnishment and for sovereign immunity were the same. ILL. CONST. art. 13, §4.

13. 18 Ill.2d 11, 163 N.E.2d 89, *cert. denied*, 362 U.S. 968 (1959).

14. The *Henderson* court referred not to governmental immunity, but rather to the "sovereign immunity of local governmental units." 59 Ill.2d at 349-50, 319 N.E.2d at 793. This phrase is actually a misnomer, since sovereign immunity applies only to the modern-day sovereign, the state, whereas governmental immunity is the doctrine which has been used to shield local governmental units from liability. Accordingly, it was governmental immunity with which the court in *Molitor* was basically concerned. *See* notes 19-33 and accompanying text *infra*.

15. 59 Ill.2d at 350, 319 N.E.2d at 793.

16. *Molitor*, in holding a school district liable for the injuries sustained by the plaintiff as a result of a school bus driver's negligence, ruled that the doctrine of governmental immunity was invalid and could not be used to grant school districts immunity from tort liability. 18 Ill.2d at 25, 163 N.E.2d at 96. This abolition of governmental immunity from tort liability was later extended to all local governmental units. *See* List v. O'Connor, 19 Ill.2d 337, 167 N.E.2d 188 (1960); Garsso v. Kucharski, 93 Ill.App.2d 233, 236 N.E.2d 262 (1st Dist. 1968). It had already been established that municipal corporations must abide by their contractual obligations. Wall v. Chicago Park Dist., 378 Ill. 81, 37 N.E.2d 752 (1941); Chalstran v. Board of Educ., 244 Ill. 470, 91 N.E. 712 (1910); City of Quincy v. Bull, 106 Ill. 337 (1883).

17. 59 Ill.2d at 350, 319 N.E.2d at 793.

18. The *Henderson* decision placed Illinois in the minority of jurisdictions ruling on this matter. *See* 17 E. MCQUILLIN, MUNICIPAL CORPORATIONS §49.86 (3d ed. 1968). For an examination of the reasoning used by the courts of other jurisdictions in applying the doctrine of public policy to exempt municipal corporations from garnishment proceedings, *see* Switzer v. City of Wellington, 40 Kan. 250 (1888); City of Roosevelt Park v. Norton Township, 330 Mich. 270, 47 N.W.2d 605 (1951); Van Cott v. Pratt, 11 Utah 209 (1895).

held that municipal corporations were exempt from garnishment for reasons of public policy and did not consider the doctrine of governmental immunity. The reasoning in *Henderson* should therefore be analyzed, to determine to what extent, if any, the rejection of the doctrine of governmental immunity logically demands the rejection of the public policy exemption of municipal corporations from garnishment.

An analysis of the rationale behind governmental tort immunity should begin with the parent doctrine of sovereign immunity. Sovereign immunity arose out of the ancient theory that "the king can do no wrong"[19] and came to be invoked by the states as a shield against tort liability.[20] The English case of *Russell v. Men of Devon*[21] first extended this immunity to municipalities by holding that an action could not be maintained against a political subdivision of the state for injuries resulting from the negligence of the subdivision.[22] Relying on *Russell*, Illinois courts adopted the immunity rule and applied it to local governmental units in Illinois.[23] This governmental immunity rule was extended to protect school districts from tort liability by *Kinnare v. City of Chicago*.[24] The reasoning set forth in *Kinnare* in support of local governmental tort immunity was, as the *Molitor* court stated, "nothing more nor less than an extension of the theory of sovereign immunity."[25] Subse-

19. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS §131 (4th ed. 1971); Mikva, *Sovereign Immunity: In a Democracy the Emperor Has No Clothes*, 1966 U.ILL.L.F. 828, 829. For a more intensive historical analysis of the origins of the doctrine and its growth, *see* Borchard, *Governmental Responsibility in Tort* (pts. VI [*sic*], V, VI), 36 YALE L.J. 1, 757, 1039 (1926-27).

20. This was ostensibly done on the theory that the sovereignty which had previously been vested in the king was now present in the modern-day state. *See* W. PROSSER, *supra* note 19. However, the adoption of this essentially monarchical doctrine in the United States has been roundly criticized as, to use the oft-quoted words of Professor Borchard, "one of the mysteries of legal evolution." Borchard, *Governmental Liability in Tort*, 34 YALE L.J. 1, 4 (1924). *See* note 27 and accompanying text *infra*.

21. 100 Eng. Rep. 359 (K.B. 1788). Because the concept of a municipal corporate entity was still unformed, the action for injuries resulting from the negligent maintenance of a bridge was brought against the entire male population of the County of Devon.

22. The *Russell* court found the county immune from such actions for the following reasons: to permit the suit would lead to an infinity of actions; no precedent allowed such a suit; there was no corporate fund to satisfy the claim; and the court felt that "it is better that an individual should sustain an injury than that the public should suffer an inconvenience." 100 Eng. Rep. at 359-62.

23. *See* Town of Waltham v. Kemper, 55 Ill. 346 (1870); Hedges v. County of Madison, 6 Ill. 441 (1844). *See also* Green, *Freedom of Litigation*, 38 ILL. L. REV. 355 (1944).

24. 171 Ill. 332, 49 N.E. 536 (1898).

25. 18 Ill.2d at 21, 163 N.E.2d at 94. The court in *Kinnare* had reasoned:

> The State acts in its sovereign capacity . . . and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency

quent Illinois cases affirmed the doctrine of governmental immunity and added "public policy" explanations for it.[26]

Molitor rejected the theory of governmental immunity from tort liability on several grounds. The first reason was that the sovereign immunity foundation of the doctrine was archaic, undemocratic, and un-American, in that "the Revolutionary War was fought to abolish that 'divine right of kings' on which the theory of sovereign immunity is based."[27] The most serious and fundamental criticism of governmental immunity from tort liability had generally been that protection of the governmental unit to the disadvantage of the individual whom it had injured is thoroughly inequitable and unjust.[28] The court in *Molitor* referred to this belief when it stated:

> It is a basic concept underlying the whole law of torts today that liability follows negligence, and that individuals and corporations are responsible for the negligence of their agents and employees acting in the course of their employment. The doctrine of governmental immunity runs directly counter to that basic concept.[29]

The *Molitor* court responded in several ways to the argument that the abolition of immunity would be financially harmful to local governmental units.[30] First, the court said that any merit to the argument should be overcome by the more fundamental principle that liability follows negligence.[31] Second, the court attacked the substance of the argument, finding the actual financial harm resulting to the governmental unit to be minimal.[32] Moreover, the court noted that the establish-

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> for the more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as is the State itself . . . .

171 Ill. at 335, 49 N.E. at 537.

26. "Public policy" meant the desire to protect public funds and property and to prevent the diversion of tax moneys from their intended purpose to the payment of damage claims. *See, e.g.*, Leviton v. Board of Educ., 374 Ill. 594, 30 N.E.2d 497 (1940); Lynwood v. Decatur Park Dist., 26 Ill.App.2d 431, 168 N.E.2d 185 (3d Dist. 1960); Thomas v. Broadlands Community Consol. School Dist., 348 Ill.App. 567, 109 N.E.2d 636 (3d Dist. 1952).

27. 18 Ill.2d at 21-22, 163 N.E.2d at 94. *See also* Pugh, *Historical Approach to the Doctrine of Sovereign Immunity*, 13 LA. L. REV. 476, 480 (1953); Mikva, *supra* note 19.

28. Tort immunity has been referred to as "one of the most severe legal injustices existing in America's system of jurisprudence." Note, *Assault on the Citadel: De-Immunizing Municipal Corporations*, 4 SUFFOLK U.L. REV. 832 (1970). *See also* Green, *supra* note 23; Harno, *Tort Immunity of Municipal Corporations*, 4 ILL. L. Q. 28 (1921).

29. 18 Ill.2d at 20, 63 N.E.2d at 93 (1959).

30. *See* note 26 and accompanying text *supra*.

31. *See* notes 28-29 and accompanying text *supra*.

32. The court in *Molitor* asserted:

ment of tort liability would lead to more careful and responsible conduct by the potential tortfeasor, the governmental unit.[33]

With this background, it is appropriate to examine the *Henderson* court's finding of similarity between the rationale of tort immunity and exemption from garnishment as they had worked to protect municipal corporations. From this alleged similarity in foundation, the court reasoned that the expansion of governmental liability to contract and tort logically required that municipal corporations be amenable to the process of garnishment. The validity of this extension must also be analyzed.

The public policy exemption from garnishment shared neither the origin[34] nor the defects[35] of governmental immunity. "Public policy" is simply a rationale employed by the courts to disallow activity judged to be injurious to the public good.[36] Garnishment of a municipal corpora-

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> [I]n no instance, even where immunity is not recognized, has a municipality been seriously handicapped by tort liability. . . . Tort liability is in fact a very small item in the budget of any well organized enterprise.

18 Ill.2d at 24, 163 N.E.2d at 95, *quoting* Green, *Freedom of Litigation*, 38 ILL. L. REV. 355, 378 (1944).

33. Referring to the particular facts of that case, the *Molitor* court stated that the abolition of tort immunity

> may tend to decrease the frequency of school bus accidents by coupling the power to transport pupils with the responsibility of exercising care in the selection and supervision of the drivers. . . . School districts will be encouraged to exercise greater care in the matter of transporting pupils . . . .

18 Ill.2d at 24-25, 163 N.E.2d at 95-96.

34. *See* notes 19-26 and accompanying text *supra*.

35. *See* notes 27-33 and accompanying text *supra*.

36. Strictly defining the principle of public policy is virtually impossible. As one court noted:

> A correct definition, at once concise and comprehensive, of the words 'public policy' has not yet been formulated by our courts. . . . In substance it may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare and the like.

Pittsburgh, Cin., Chi. & St. L. Ry. v. Kinney, 95 Ohio 64, 67-68, 115 N.E. 505, 506 (1916). An Illinois court has also stated that there is no precise definition of "public policy." Ziegler v. Illinois Trust & Sav. Bank, 245 Ill. 180, 193, 91 N.E. 1041, 1046 (1910); *accord*, Schnackenberg v. Towle, 4 Ill.2d 561, 123 N.E.2d 817 (1955); Routt v. Barrett, 396 Ill. 322, 71 N.E.2d 660 (1947).

Because of the amorphous nature of public policy, the courts have freely applied the doctrine to a variety of factual situations to achieve the desired result. *See, e.g.*, Hammonds v. Aetna Cas. & Sur. Co., 243 F. Supp. 793 (N.D. Ohio 1965) (holding that public policy demands doctors obey their implied promise of secrecy concerning confidential information gained through the patient-physician relationship); Succession of Butler, 281 So.2d 189 (La.App. 1973) (holding that a contract to terminate a marriage is void as

tion was thought to constitute such an injury, and therefore public policy denied it effect against local governmental units.[37] An apparent similarity between the "public policy" type of reasons used to support governmental immunity and the public policy doctrine used to support the garnishment exemption may be perceived. Both explanations seem to be concerned with the unburdened retention of public resources, funds and workers' energies for their designated purposes. However, an examination of the context in which each argument has been maintained will reveal the presence of substantial operational differences.

The "resource protection" argument advanced in support of governmental immunity, like the immunity doctrine itself, was seriously attacked on the ground that shielding the governmental unit from tort liability unjustly negated the principle that liability should follow negligence.[38] On the other hand, the public policy which had exempted a municipal corporation from garnishment did not attempt to shield it from liability for its negligent or irresponsible actions because no negligence or breach was involved. Rather, the exemption was designed to limit the extent to which a municipal corporation's public function could be disrupted to settle a claim arising between two private persons.[39] Since the garnishment action was seen to be an interference with the corporation's public function for a private conflict in which the corporation had no interest, it was decided that the policy allowing public corporations to function without impediment was a sufficiently compelling reason to exempt municipal corporations from the garnishment process.

In light of this analysis, it becomes difficult to understand the declaration in *Henderson* that reason and logic require municipal amenability to garnishment to follow municipal liability in tort or contract. The foundations of the exemptions are not, in fact, the same. Upon further analysis of the unrelated reasons for abolishing each exemption, the

against public policy); Budwit v. Herr, 339 Mich. 265, 63 N.W.2d 841 (1954) (holding that a husband who had murdered his wife could not collect the proceeds of her life insurance policy because public policy mandates that no one may profit from his own criminal act); *In re* Metropolitan Util. Dist., 179 Neb. 783, 140 N.W.2d 626 (1966) (holding that the waste of underground waters qualifying as a natural resource was against public policy).

37. *See* notes 4-5 and accompanying text *supra*.

38. *See* notes 28-31 and accompanying text *supra*.

39. The *Merwin* court, in granting the exemption from garnishment, stated that the municipal corporation should not be "liable to be drawn into court at the suit of every creditor of its numerous employees . . . and be engaged in much expensive and vexatious litigation *in which it has no interest* . . . in order that one private individual may the better collect a demand due from another." 45 Ill. 133, 135-36 (1867) (emphasis added).

court's logic becomes more difficult to follow. In judging the effect of establishing tort liability for local governmental entities, the court in *Molitor* predicted that the cost of recoveries paid would be small, and that liability would make the governmental unit more careful and responsible.[40] It is doubtful that these considerations have any significant applicability to the public policy exemption from garnishment. With both tort and contract actions there is perhaps a cause and effect relationship: if the expected influence of the establishment of liability is realized and the governmental unit exercises greater care and responsibility, it can by its own behavior limit the number of tort or breach of contract actions to which it must respond. The governmental unit does not enjoy the same possibilities of control over the garnishment process. With numerous employees in all levels and types of service, it is very difficult to predict how many of those employees will incur debts which will subsequently lead to garnishment proceedings. Even assuming that the municipal corporation acts in a very responsible manner, there seems to be very little it can do to avoid garnishment actions.[41] Thus, application of the *Molitor* court's reasoning, that a governmental unit will be more responsible if its tort immunity is abolished, has no application to an exemption from garnishment.

Having based its decision on the analogies discussed above, the court, at the end of its opinion, appears to make one attempt to respond directly to the public policy argument for exemption from garnishment maintained by the *Merwin* line of cases.[42] The *Henderson* court stated simply that it wished to adopt the rationale of *Waterbury v. Board of Commissioners of Deer Lodge County*,[43] an 1891 Montana decision. The court there discounted the burdens of the garnishment process on a municipal corporation. It rejected the *Merwin* public policy rationale, preferring instead to emphasize the principle that "debtors should pay their debts."[44]

40. *See* notes 32-33 and accompanying text *supra*.

41. Indeed, an employer is forbidden under both state and federal law to discharge an employee by reason of wage deduction or garnishment for any one indebtedness. *See* ILL. REV. STAT. ch. 62, §88 (1975); 15 U.S.C. §1674 (1970).

42. 59 Ill.2d at 350-51, 319 N.E.2d at 793.

43. 10 Mont. 515, 26 P. 1002 (1891) (holding that Deer Lodge County, a municipal corporation, would be subject to the garnishment process).

44. *Id.* at 522-23, 26 P. at 1004-05. It should be noted that no court, even if it were granting the exemption from garnishment, would deny the principle that debtors should pay their debts. The problem at issue in these cases was whether municipal corporations should or should not be called in to facilitate such payment of debts. The *Waterbury* court felt that they should, and that the public policy argument was not of sufficient weight to form the basis for an exemption.

The effect of adopting the *Waterbury* rationale may not be immediately apparent because it comes in the context of a discussion which avoids a critical analysis of the public policy argument favoring exemption from garnishment. Nevertheless, an examination of *Henderson* leads to the conclusion that the court did intend to substantively reject the public policy rationale which had supported the exemption of municipal corporations from garnishment.

The *Henderson* court's rejection of a public policy exemption from liability may not be limited to garnishment situations. For example, shortly before the *Henderson* decision, the Illinois Appellate Court held that laches did not prevent the Illinois Department of Mental Health from recovering a claim against the estate of a deceased incompetent.[45] The court found that even though sovereign immunity had been abolished,[46] public policy still barred the application of laches against governmental units.[47] Not only did public policy operate in both the garnishment and laches exemptions to the unique benefit of the governmental unit,[48] but the specific argument regarding the impairment of governmental functions presented in both instances appears to be virtually identical.[49] Since this public policy argument has been rejected

45. *In re* Estate of Vandeventer, 16 Ill.App.3d 163, 305 N.E.2d 299 (4th Dist. 1973). *Vandeventer* involved an apparently stale claim for reimbursement made by the Illinois Department of Mental Health against a deceased incompetent's estate. In this type of situation, the doctrine of laches would normally be applicable to bar an untimely claim. However, the Illinois courts have consistently held that the doctrine of laches is not applicable to governmental units in the exercise of their governmental functions. *See In re* Estate of Grimsley, 7 Ill.App.3d 563, 288 N.E.2d 66 (4th Dist. 1972); Shoreline Builders Co. v. City of Park Ridge, 60 Ill.App.2d 282, 209 N.E.2d 878 (1st Dist. 1965); City of Chicago v. Miller, 27 Ill.2d 211, 188 N.E.2d 694 (1963).

46. The conservator of the estate argued that the refusal of the Illinois courts to allow laches to bar state claims is a derivative of the discredited and abolished doctrine of sovereign immunity, *see* note 12 and accompanying text *supra*, and therefore should have been abandoned by the court. 16 Ill.App.3d at 164, 305 N.E.2d at 300.

47. The court stated that the most important reason for denying laches as a bar to action by the state is

> the public policy involved and the possibility that application of laches or estoppel doctrines may impair the functioning of the State in the discharge of its governmental functions and that valuable public interest may be jeopardized or lost by the negligence in the State or inattention of public officials.

Id. at 169, 305 N.E.2d at 300-01.

48. In the garnishment situation, the governmental unit was in a passive role while money was being sought by an outsider. In the case where laches was raised against the government, the government itself was bringing the claim to collect funds. However, in both cases, public policy became the basis of a ruling which protected the governmental unit and operated only for its express benefit.

49. *Compare* the *Vandeventer* court's reasoning, 16 Ill.App.3d at 169, 305 N.E.2d at

by *Henderson*, its substantive worth seems to have diminished.[50] Therefore, a reasonable extension of the *Henderson* holding could result in a reconsideration by the Illinois courts of the public policy which generally prohibits the invocation of laches against governmental units.

The *Henderson* decision may also affect the long-standing Illinois exemption of municipal corporations from execution. In *City of Chicago v. Hasley*,[51] the Illinois Supreme Court held that because a municipality controls corporate property only for corporate purposes, an execution could not be levied to recover on a judgment against it.[52] The *Merwin* court noted its reliance on the "spirit and reasoning" of *Hasley* in finding that public policy also demanded that municipal corporations be exempt from garnishment.[53] Because the *Henderson* court expressly overruled those decisions which granted an exemption from garnishment,[54] the *Hasley* protection against execution may now stand on weaker ground. While the *Henderson* court may have judged the public policy argument against impairment of governmental functions to be of

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300-01, *with* the *Merwin* court's logic, note 39 *supra*.

50. There is a difference between the garnishment and laches situations which reinforces this conclusion. As the court in *Vandeventer* noted, laches could possibly be invoked against the governmental unit if it had committed positive acts which contributed to a situation in which the disallowance of the laches defense would be clearly inequitable. 16 Ill.App.3d at 164-65, 305 N.E.2d at 301. *See also* Hickey v. Illinois Cent. R.R., 35 Ill.2d 427, 220 N.E.2d 415 (1966) (holding that where the state and city had, for more than 50 years, disclaimed any interest in certain land and had acted as if the railroad owned the land in fee, laches prevented them from asserting any claim to the land). The *Vandeventer* court concluded, however, that in the case before it there was "only inaction on the part of State officials." 16 Ill.App.3d at 164, 305 N.E.2d at 301. In contrast, neither the municipal corporation nor its officers were guilty of any neglect, fault or omission when a wage deduction order was issued against them. Nevertheless, the *Henderson* court held that the governmental unit was to be subjected to the garnishment process. The public policy exemption which had been in effect for so long was held not to be of sufficient weight to give any further protection. It is dubious logic which would remove the benefit of the public policy argument in a situation where there was no neglect or harmful inaction on the part of the governmental unit, but would continue to grant the public policy benefit in cases where there was such neglect and inaction.

51. 25 Ill. 485 (1861).

52. This ruling was reaffirmed in subsequent cases. *See, e.g.*, Moore v. Town of Browning, 373 Ill. 583, 27 N.E.2d 533 (1940); Village of Kansas v. Juntgen, 84 Ill. 360 (1877); City of Bloomington v. Brokaw & Co., 77 Ill. 194 (1875); City of Kinmundy v. Mahan, 72 Ill. 462 (1874).

In order to collect a judgment against a municipal corporation, the judgment creditor may seek a writ of mandamus to compel payment or to compel a levy of taxes sufficient to discharge the judgment. Hasley v. City of Chicago, 25 Ill. at 489; Moore v. Town of Browning, 373 Ill. at 586, 27 N.E.2d at 535.

53. 45 Ill. at 134-35; *see* note 5 *supra*.

54. 59 Ill.2d at 351, 319 N.E.2d at 793.

insufficient weight to uphold a garnishment exemption, a subsequent court may find it to be of sufficient weight to support protection from execution.[55] This was precisely the result reached in *Waterbury*,[56] the case which the *Henderson* court cited with approval. Whether *Henderson* will weaken the *Hasley* rule prohibiting execution against municipal property has not yet been litigated in Illinois.

The impact of the *Henderson* decision on other Illinois public policy exemptions for municipalities cannot be understood completely because the court did not explicitly analyze and reject the public policy reasons for exemption of municipal corporations from garnishment. Presumably, that exemption would have been overruled only if a later court found that either the burdens had diminished and the public policy rationale had therefore disappeared, or that, for some other reason, the public policy reason was no longer applicable. However, the *Henderson* court did not articulate how the burdens of garnishment have decreased for a modern municipality with numerous employees. Although the court accepted the reasoning of *Waterbury*, it failed to identify any significant operational resemblance between a Montana County in the 1890's and an Illinois municipal corporation in the 1970's. Therefore, the reasons for abandoning the public policy rationale remain unclear. In rejecting the long-standing public policy exemption from garnishment, the court should have undertaken a more intensive examination of its current strength and of the contemporary municipal corporation's need for the exemption. The public policy of a state is neither rigid nor static. Therefore, Illinois' public policy may have changed with respect to this issue since the *Merwin* decision. The court's failure to articulate what these changes may be leaves some doubt about the continued validity of the public policy exemption for municipal corporations in other areas of the law.

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55. This result may be supported by the different natures of the garnishment and execution actions. In a garnishment action, the creditor seeks to attach the salary fund which the employer would otherwise pay out to the employee. On the other hand, an execution could lead to the recovery and sale of property which, in the case of the municipal corporation, could be property used to protect or maintain the public good. *Compare* ILL. REV. STAT. ch. 62, §§71-88 (1975) (Wage Deduction Act), *with* ILL. REV. STAT. ch. 77, §§1-68a (1975) (Judgments, Decrees and Executions Act).

56. The *Waterbury* court agreed with the public policy argument as it was used in *Hasley*, and with the result reached therein, but rejected the *Merwin* court's extension of that public policy argument to garnishment situations. 10 Mont. at 522-23, 26 P. at 1004-05.