

VOLUME NO. 41

OPINION NO. 7

CHILD CUSTODY AND SUPPORT - Function of county attorney with regard to judgments and satisfactions;

COUNTY ATTORNEYS - Duties of county attorney in URESA actions;

JUDGMENTS - Satisfaction and sale of property upon which a lien exists;

MONTANA CODE ANNOTATED - Sections 25-9-301, 25-9-311, 37-61-401, 40-4-208, 40-5-101 to 40-5-142, 40-5-103(15), 40-5-113, 40-5-119, 40-5-125.

HELD: A county attorney may not enter into an agreement compromising or satisfying a support order, or an agreement to allow the sale of property on which a support order is a lien.

11 February 1985

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You requested an opinion concerning whether a county attorney representing obligees under URESA may agree to compromise a support order, or to allow the sale of property on which a support order acts as a lien.

The Montana Revised Uniform Reciprocal Enforcement of Support Act (URESAs), §§ 40-5-101 to 142, MCA, delegates the responsibility of representing URESA obligees to the county attorney, whether acting for the initiating or the responding jurisdiction. §§ 40-5-113, 40-5-119, MCA. The result of a URESA action may be a "support order" which is a judgment, decree, or order of support in favor of an obligee. § 40-5-103(15), MCA. When the court issues a support order against an obligor, a lien is created on all nonexempt real property of the obligor in that county until the judgment is satisfied or for six years. §§ 25-9-301, 40-5-125, MCA.

The question arises when a county attorney is asked by the obligor or his agent to enter into an agreement to compromise or satisfy a support order or allow the sale of property on which a support order is a lien. The county attorney may not enter into an agreement to compromise a support order, as a support order may only be modified by a court, according to section 40-4-208, MCA. Furthermore, section 40-4-208(1), MCA, specifies that a modification of a court's decree as to child support or maintenance may not affect accrued and unpaid amounts, only those amounts accruing subsequent to the motion for modification. The Montana Supreme Court has repeatedly held void attempts to retroactively reduce or eliminate support or maintenance payments. Williams v. Budke, 186 Mont. 71, 606 P.2d 515 (1980); Dahl v. Dahl, 176 Mont. 307, 577 P.2d 1230 (1978); Porter v. Porter, 155 Mont. 451, 473 P.2d 538 (1970); Kelly v. Kelly, 117 Mont. 239, 157 P.2d 780 (1945).

Payment of support orders is discussed in section 40-5-125, MCA, and satisfaction of a judgment is

provided for in section 25-9-311, MCA. Recognition of satisfaction of a judgment is a court duty, and although a county attorney can receive money according to section 37-61-401, MCA, he does not have the authority, as does the court, to declare a support order satisfied.

THEREFORE, IT IS MY OPINION:

A county attorney may not enter into an agreement compromising or satisfying a support order, or an agreement to allow the sale of property on which a support order is a lien.

Very truly yours,

MIKE GREELY
Attorney General