

Opinion No. 167.**State Auditor—Warrants—Assignments of Salary or Wages—Wage Brokers—Interpleader.**

HELD: 1. The general rule is that consent to or acceptance of an assignment on the part of the debtor or its official representative is not essential to the validity thereof, either as between the parties thereto or as against the debtor.

2. A suit of interpleader is advised since, under the facts submitted, it is impossible to determine whether the assignee is a wage broker.

September 9, 1935.

Hon. John J. Holmes
State Auditor
The Capitol

Your letter to us of September 3 is as follows:

"Under date of June 27, 1935, Frank Teskey, an employee of the State of Montana, assigned to Gus Teskey all moneys due him from the State of Montana. Under the stipulations of the assignment Gus Teskey was to be the assignee until further notice.

"Under date of August 30, 1935, a writ of garnishment under aid of execution was served upon me by the sheriff of Lewis and Clark County.

"Pursuant to said writ I was to hold all moneys, goods, credits, effects, etc., belonging to F. A. Teskey until further order of the sheriff.

"Coextensive with the filing of the writ of attachment, C. A. Spaulding, Attorney at Law, Helena, Montana, forwarded the attached letter.

"The question arises whether or not this office must accept assignments filed with the office and if so, must the office go beyond the assignment and discover whether or not the assignment falls within the rule of the case of *Costello v. Great*

Falls Iron Works, referred to in Mr. Spaulding's letter? In other words, as State Auditor of the State of Montana, am I duty bound to accept assignments and, if so, have I power to investigate the authenticity of the assignment and must I determine whether or not an assignment is violative of the several code provisions relative to wage brokers, etc?

"It would appear as if the responsibility of searching authenticity of assignments, if I must accept the same, places a decided burden on my office. If I am to be held personally responsible for assignments by judgment creditors, then the entire personnel of my department would be engaged in checking assignments as it is becoming common practice of state employees to make assignments of their wages and moneys due and owing them from the State of Montana. How far am I personally responsible in accepting an assignment of an employee of the State of Montana, where I have no knowledge of the facts upon which the assignment is predicated and am not a party to any collusion which may exist between the said employee and some other person?"

"Your opinion is respectfully requested."

The letter of C. A. Spaulding to you is as follows:

"Accompanying this letter is a writ of execution and a notice of garnishment of the moneys owing from the State of Montana to one F. A. Teskey in the suit of Helena Adjustment Company v. F. A. Teskey. My understanding is that one Gus Teskey presented to you a so-called assignment of the moneys due to F. A. Teskey, which assignment you have heretofore recognized and thereunder have turned over moneys to the said Gus Teskey.

"This letter is to notify you that under Sections 4173 et seq., of the Revised Codes of Montana of 1921, such an assignment is invalid, and should not be recognized by you, for which reason suit will be brought against you for any moneys you may turn over to the said Gus Teskey by virtue thereof. My reason for the foregoing statement as to the invalidity of this assignment is based

upon a construction of the Wage Brokers Statute, above adverted to, by our Supreme Court in the case of Costello v. Great Falls Iron Works, 59 Mont. 417. It was there held that anyone was a wage broker if he parted with, gave or loaned money to another, either directly or indirectly, in consideration of an assignment of wages thereafter to be earned; and it was there further held that any such assignment to a wage broker was void as against creditors of the assignor.

"For your own protection I suggest that you decline to recognize this assignment unless or until the Attorney General of the State of Montana advises that you are entitled to give it recognition."

If on June 27, 1935, Gus Teskey was a wage broker as the term is defined in Section 4175, Revised Codes 1921, then Sections 4176, 4179 and 4182, of the same code fully cover the case. The four sections are a part of the act which regulates the business of wage brokers and read as follows:

"Section 4175. Any person, company, corporation, or association parting with, giving, or loaning money, either directly or indirectly to any employee or wage-earner, upon the security of or in consideration of any assignment or transfer of wages or salary of such employee or wage-earner, shall be deemed to be a wage broker within the meaning of this Act."

"Section 4176. No assignment of his or her wages or salary by any employee or wage-earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all of the wages or salary theretofore earned."

"Section 4179. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same, accompanied by a copy of the assignment, shall be given to the employer within one day from the date of its execution; and all assignments shall be filed in the office of the county

clerk of the county where the assignor resides, and no assignment shall be valid unless so filed."

"Section 4182. Any note, bill, or other evidence of indebtedness, and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this act, shall be void as against the creditors of the assignor or transferer."

It will be noted that an assignment of his wages or salary by an employee to a wage broker is invalid unless it be for a definite part or all of the wages or salary earned before the assignment was made, and that an assignment of wages or salary to a wage broker contrary to the provisions of the Act is void as to creditors of the assignor. (*Costello v. Great Falls Iron Works*, 59 Mont. 417; *Security State Bank v. Melchert*, 67 Mont. 535.)

The notice required by Section 4179 must in a case of the kind under consideration be given to the State Auditor as the official representative of the State of Montana. (*Porter v. Hartley*, 67 Mont. 244.)

If, on the other hand, Gus Teskey was not a wage broker on June 27, 1935, then a notice of the assignment of wages made to him on that day by Frank Teskey, a state employee, should likewise be filed with the State Auditor. (*Porter v. Hartley*, supra.)

The general rule is that consent to or acceptance of an assignment on the part of the debtor or its official representative is not essential to the validity thereof, either as between the parties thereto or as against the debtor. (5 C. J. 937; 4 Page on Contracts, sec. 2295, and supp.; *Oppenheimer v. First Nat. Bank*, 20 Mont. 192.)

As it is impossible to determine from the facts before us whether or not Gus Teskey was a wage broker on June 27, 1935, and, as a consequence, who is entitled to the fund under your control, we advise that you institute a suit in interpleader against Gus Teskey, Helena Adjustment Company and Brian D. O'Connell, as sheriff of Lewis and Clark County. This course was followed in the case of *Porter v.*

Hartley, supra, and under the circumstances we deem it the only safe and satisfactory course.