

Opinion No. 334.

Offices and Officers—Garnishment—
Salaries—Montana Relief
Commission.

HELD: 1. The Montana Relief Commission, when served with a writ of garnishment, should pay over to the attaching officer all debts or credits or other property owing or belonging to the defendant and which are in the hands of the commission on the day the writ is served, unless the writ commands payment of a lesser sum.

2. Methods of drawing salary checks in case of garnishment are indicated.

July 31, 1936.

Montana Relief Commission
Helena, Montana

I have your letter asking us to furnish you with information concerning the law of garnishment and executions.

Your first question is as follows: "Does the Montana Relief Commission fulfill its obligation by holding out only sufficient of the defendant's salary to satisfy the amount of the recovery action plus the court costs as shown on the Notice of Garnishment, or is it obligatory upon the Commission to withhold any additional undetermined sum to cover possible additional costs, which might accrue through the necessity for publication of summons in cases where the defendant now lives in a county other than that in which the action is brought, through further court action if the defendant should contest the suit and finally be found against, or through any other subsequent costs?"

Section 9267, R. C. M. 1935, provides: "All persons having in their

possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied."

The writ referred to in the above section requires the sheriff "to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, * * * unless the defendant give him security * * * in an amount sufficient to satisfy such demand, besides costs, * * *. In no case shall the sheriff attach more property than appears necessary to satisfy the plaintiff's demand." (Section 9260, R. C. M. 1935.)

Under the foregoing sections it is clear that it is not incumbent upon the garnishee to determine the extent of the plaintiff's claim against the defendant. The duty of the garnishee is simply to obey the terms of the writ served upon him.

"A garnishee is regarded as an innocent person owing money to, or having in his possession property of another, without fault or blame, and he is supposed to stand indifferent as to who shall have the money or property * * *. The garnishee, in the eye of the law, is a mere stakeholder, a custodian of property or estate attached in his hands, and has no right to do any voluntary act to the prejudice of either plaintiff or defendant in the action. He must let the law take its course * * *." (12 R. C. L. 850).

Since the usual writ of garnishment, in which the garnishee is required to answer whether it is indebted in any sum whatsoever to defendant, attaches all the property of the defendant in the hands of the garnishee (28 C. J. 243), it is our opinion that you should pay over to the attaching officer all debts or credits or other property owing or belonging to the defendant, and which

are in your hands on the day that the writ is served upon you (Drake on Attachments, 7th Ed., Section 667; 28 C. J. 243), unless the writ commands you to pay over a lesser sum, in which event you should comply with the terms of the writ. (Fousek v. DeForest, 90 Mont. 448, 4 Pac. (2d) 472; Wade on Attachments, Sections 529, 532; 28 C. J. 265).

Your second question is: "Is the Montana Relief Commission permitted to draw the check to the order of the employee, against whom the Writ of Execution is obtained, have the employee endorse the check, and then deliver it to the constable serving the writ?"

We know of nothing in the law which prohibits you from following such a procedure as long as the employee is willing to so endorse the check.

Your third question is: "If the employee in question cannot be located for the purpose of securing his endorsement to his salary check, or if he refuses to endorse the check, is the Montana Relief Commission compelled or permitted by law to issue a check to satisfy the execution and, if so, to whose order should the check be drawn, to whom delivered and in what amount?"

The check should be drawn to the order of, and delivered to the sheriff or constable that serves the writ upon you (Section 9267, *supra*, and Section 9662 R. C. M. 1935), in the amount specified in the writ, as we advised in our answer to your first question above.