

COUNTY ATTORNEYS - Registration and enforcement of foreign support orders;
SUPPORT ORDERS - Registration and enforcement of foreign support orders;
UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ORDERS ACT - Registration and enforcement of foreign support orders;
MONTANA CODE ANNOTATED - Title 40, chapter 5, part 1; section 25-13-204.

HELD: A private attorney may register and enforce a foreign support order under the Uniform Reciprocal Enforcement of Support Act in Montana; the county attorney shall represent an obligee in registration and enforcement under URESA when so requested pursuant to section 40-5-139, MCA.

27 September 1984

Harold F. Hanser
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Yellowstone County Courthouse
Room 508
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Dear Mr. Hanser:

You have asked my opinion on a question I have phrased as follows:

Who may register and enforce a foreign support order in Montana?

The statutes applicable to your question are contained in the Uniform Reciprocal Enforcement of Support Act, Tit. 40, ch. 5, pt. 1, MCA. I find no cases that speak directly to your question, either in Montana or in the many other jurisdictions that have adopted the uniform act. Nevertheless, your question can be answered by applying certain principles of statutory construction.

First, a remark about the structure of the substantive parts of the act: The primary portion of the act (§§ 40-5-112 to 135, MCA) deals with the establishment

in one state (the responding state--usually the state of the obligor's residence) that a duty of support exists under the law of another state (the initiating state--usually the state of the obligee's residence). In proceedings under this part of the act, a five-step procedure must be followed:

1. Identification of the support duty;
2. Filing the petition;
3. Initiating court review and location of obligor;
4. The responding court hearing;
5. The issuance of the support order.

Fox, The Uniform Reciprocal Enforcement of Support Act, 4 Fam. L. Rep. 4017.

The act also provides for the much simpler procedure of registration (§§ 40-5-136 to 141, MCA) "[i]f the duty of support is based on a foreign support order." § 40-5-136, MCA. Your question relates solely to the registration procedure, but the five-step procedure will be referred to, as the two procedures are structured similarly.

Section 40-5-137, MCA, states who may register a foreign support order:

The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

An attorney or other agent may register a foreign support order for an obligee. § 28-10-105, MCA; Clinton v. Miller, 124 Mont. 463, 474, 226 P.2d 487 (1951). In certain cases, a county attorney may be requested to represent an obligee:

(1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

§ 40-5-139, MCA. The obligee is responsible for registering a foreign support order unless the local prosecutor has been requested or ordered to do it. This procedure parallels the procedure an obligee uses to establish a foreign duty of support. §§ 40-5-112, 40-5-113, MCA.

Once a foreign support order is registered, it has the same effect as a support order of this state. § 40-5-141, MCA. If the obligor does not voluntarily comply with the support order, the order may be enforced through court proceedings.

The statutes on enforcement of registered support orders appear to be ambiguous. Section 40-5-140(3), MCA, appears to place the duty of enforcement on the prosecuting attorney:

Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

On the other hand, section 40-5-141(1), MCA, implies that a private right of enforcement exists:

Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

See also Tit. 25, ch. 13, MCA, Execution of Judgment.

If possible, statutes must be read in harmony and effect given to each. State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 525 P.2d 564 (1974). In light of that rule, I interpret the prosecuting attorney's duty of enforcement under section 40-5-140(3), MCA, as applying to those cases where he had been requested to represent an obligee under section 40-5-139, MCA. In cases where the obligee had registered the foreign support order and the prosecuting attorney was not requested to represent the obligee, enforcement could proceed by execution by the obligee under sections 40-5-141(1) and 25-13-204, MCA.

THEREFORE, IT IS MY OPINION:

A private attorney may register and enforce a foreign support order under the Uniform Reciprocal Enforcement of Support Act in Montana; the county attorney shall represent an obligee in registration and enforcement under URESA when so requested pursuant to section 40-5-139, MCA.

Very truly yours,

MIKE GREELY
Attorney General