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GARNISHMENT—ATTACHMENT—PERSONAL EARNINGS OF JUDGMENT DEBTOR — GARNISHEED OR ATTACHED — WAGES NOT EXEMPT FROM EXECUTION OR ATTACHMENT — WITHHELD BY JUDGMENT DEBTOR'S EMPLOYER—GARNISHEE FEE—CREDITOR, DEBTOR, LIABILITY FOR COURT COSTS — LEGAL PUBLICATION — STATUS, EXCESS COSTS PAID TO PRINTER, TAXED AS COSTS—SECTIONS 10271, 11721, 11725, 1697 G. C.

SYLLABUS:

By reason of the provisions of Section 10271 of the General Code when the personal earnings of a judgment debtor have been garnisheed or attached and there has been withheld by the judgment debtor's employer, for the payment of the judgment, the portion of such wages not exempt from execution or attachment under authority of Sections 11721 and 11725 of the General Code, plus the sum of Two Dollars and not to exceed fifty cents for garnishee fee, neither the creditor nor the debtor is further liable for the court costs in the action, even though such excess costs include costs paid to a printer under authority of Section 1697 of the General Code which have been taxed as costs in such action.

Columbus, Ohio, November 1, 1943.

Bureau of Inspection and Supervision of Public Offices,
State House Annex,
Columbus, Ohio.

Gentlemen:

Your request for my opinion reads:

"We are inclosing herewith communications from our City of Cleveland Chief Examiner and Chief Justice of the Municipal Court of said City, in which a question is submitted that we are unable to answer for lack of previous rulings. May we request that you examine the inclosures and give us your opinion on the following question.

Is the fee for legal publication provided by Section 1697 of the General Code, as amended by Amended Substitute Senate Bill No. 134, included in the maximum fee allowable under Section 10271, General Code?"

The question posed by you is otherwise stated in the letter of the Chief Justice of the Municipal Court of Cleveland as follows:

“Is the fee for legal publication provided for by Section 1697 of the General Code, included in the maximum fee allowable under Section 10271? In other words, must the clerk pay to the Legal News, which is our official law journal, the sum of \$1.00, which is now the publication fee, despite the fact that the total amount of costs collectable under Section 10271 is only \$2.00, or is it lawful or permissible to require payment of the publication fee in addition to the \$2.00 set forth in General Code Section 10271?”

Section 1697 of the General Code, referred to in your letter, reads as follows:

“For the publication of such calendars, motion dockets and notices, the fees for which are not fixed by law, the publisher of the paper shall receive a sum to be fixed by the judges, not exceeding one dollar for each case brought, to be paid in advance by the party filing the petition, or transcripts for appeal or lien, and thereafter be taxed in the costs and collected as other costs, and for the publishing of abstracts of legal advertising, a sum to be fixed by the judges, not exceeding one dollar for each case, proceeding or matter, each time in which such advertising is had, to be taxed and collected as a part of the costs thereof.”

It is to be observed that such section in terms fixes the maximum compensation which may be paid for publication of such court calendars, motion dockets and notices as are not *otherwise* fixed by law. Such section does not purport to specify the compensation to be paid for the publishing of notices when such fees are specifically fixed by other statutes. It likewise fixes the maximum compensation to be paid for publication of abstracts of legal advertising and provides that such compensation shall be taxed as part of the costs.

Section 10271 of the General Code, also mentioned in your inquiry, does not purport to fix the quantum of court costs in any judicial action. It purports to place further limitations upon the liability of the personal earnings of a debtor for the payment of judgments in an action for work and labor or necessaries. Thus, in Section 11721 of the General Code it is provided with respect to the liability of the personal earnings of an unmarried person for the payment of a judgment that:

“Every unmarried person resident of the state may hold property exempt from execution, attachment, or sale, to satisfy a judgment or order as follows: * * *

3. Personal earnings of the debtor for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject such earnings

to the payment of a debt, damage, fine or amercement, in an amount up to but not in excess of thirty dollars.”

Similarly Section 11725 of the General Code limits the liability of the earnings of heads of families for payment of judgments. The pertinent part of such section reads :

“Every person who is the chief support of a family, or who is a person paying alimony, maintenance, or other allowance for the support of a divorced or separated spouse, or for the support of a minor child or children, or is the chief support of any dependent person, and every widow, may hold property exempt from execution, attachment or sale, for debt, damage, fine or amercement, as follows: * * *

6. Eighty per cent of the first two hundred dollars and sixty per cent of the balance of the personal earnings of the debtor for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject such earnings to the payment of a debt, damage, fine or amercement, but in no event shall the amount of such personal earnings exempt be less than sixty dollars. * * *”

Section 10271 of the General Code relaxes limitations as to the use of the exempted portion of the personal earnings exempted by Sections 11721 and 11725 of the General Code as follows :

“The personal earnings exempted by law shall be liable to the plaintiff for the actual costs of any proceedings brought to recover a judgment for work and labor, or necessities, and for any proceedings to satisfy said judgment in any sum not to exceed two dollars and the necessary garnishee fee for each suit, attachment, aid of execution or other proceeding. Such garnishee may pay to such debtor an amount equal to the personal earnings of such debtor exempted by law, less the sum of two dollars and the necessary garnishee fee not to exceed fifty cents, if the same is demanded by the garnishee, for actual costs as herein provided, due at the time of the service of process or which may become due thereafter and before trial and be released from any further liability to such creditor, or to the court or any officers thereof, in such proceeding, or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in said original action. Both the debtor and the creditor shall likewise be released from any further liability to the court or any officers thereof in such proceedings or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in said original action. However, the exemption of thirty dollars or less provided for in section 11721 of the General Code of Ohio and the minimum

exemption of sixty dollars or less provided for in section 11725 of the General Code of Ohio shall not be subject to the payment of costs of any proceedings brought to recover a judgment for a debt nor for any proceedings to satisfy said judgment."

The question of the interpretation of Section 10271 of the General Code has been before the Attorney General on several occasions. During the year 1926 (1926 Opinions of the Attorney General, No. 3905, page 557), the Attorney General was asked as to the fees that could be collected by a justice of the peace and his constable in a garnishment of the personal earnings of a head of a family. He held, as stated in the syllabus, that:

"Under the amended garnishee law \$2.50 is the maximum amount that may be charged for costs, including the garnishee fee, in any proceeding to garnishee wages, irrespective of the incidental actions instituted to enforce the judgment."

In 1930 (Opinions of the Attorney General for 1930, No. 2168, Vol. II, page 1239), the Attorney General was asked for his opinion as to whether the portion of the personal earnings of a debtor exempted by Sections 11721 and 11725 of the General Code could be subjected to the payment of the costs in the original action of \$6.05 or whether the limit as to the costs to be so collected was not \$2.00, plus the garnishee fee. His opinion, as summarized in the syllabus, reads:

"The sum of \$2.50 for costs and garnishee fee is the maximum amount that may be taxed as costs in any proceeding to recover and enforce a judgment from the personal earnings of a debtor, based upon a claim for work and labor or necessities."

Section 10271 of the General Code, as enacted in the General Code of 1910, provided that the personal earnings of a debtor then exempted by law should be liable for the actual costs of a proceeding brought to recover them in a sum not to exceed Four Dollars and that upon payment of such costs from the exempted earnings the garnishee should be released from liability to the judgment creditor for the sum so retained for the purpose of paying such costs. During the year 1913 (103 O. L. 567) such section was amended so as to decrease the amount which might be held from otherwise exempted earnings of the debtor to Two Dollars, plus a garnishee fee of not to exceed fifty cents, if demanded by the garnishee. Such amendment added to the expression "and be released from any liability to the creditor", as contained in original Section 10271 of the General Code, the following language:

"or to the court or any officer thereof, in such proceeding, or in any subsequent proceeding, brought for the purpose of enforcing the balance of the costs in said original action. Both the debtor

and the creditor shall likewise be released from any further liability to the court or any officer thereof in such proceeding or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in the original action."

In 1933 (115 O. L. 431) this language was further supplemented by the addition of the last sentence now contained in Section 10271 of the General Code.

Thus, it would seem that under the original Section 10271 of the General Code the garnishee, upon receipt of notice of garnishment or attachment, might pay to the debtor all of his exempted earnings, except the Four Dollars retained for court costs and that upon his retention of the non-exempt wages so garnisheed or attached and such amount with which to pay costs, he could not be held liable in such proceedings except to the extent of the moneys so retained. The amendment in 103 O. L. 567 not only released the garnishee from such liability to pay the then accrued costs in the action, but from any liability for future costs subsequently accruing therein. However, such amendment further released the debtor and the creditor, upon the happening of such retention by the garnishee, from all liability for the payment of then existing or subsequently accruing costs either in that action or any other action brought for the collection of costs so accrued.

From the history of such Section 10271 it would appear that the original purpose of the section was to permit the garnishee to pay over to the debtor all of his wages other than that portion which was subject to the satisfaction of the judgment and costs, without liability to the creditor for so doing. The amendment in 103 O. L. 567 not only released the garnishee from liability to the judgment creditor, but to the court as well for all costs then due or subsequently accruing in the original action or in any other action brought to enforce payment of costs. Such amendment further provides that when a garnishee has so withheld the sum of Two Dollars and the garnishee fee from the exempted earnings of the debtor employe neither the debtor employe nor the creditor shall be further liable for the costs due in such original action.

There is a well established rule concerning the interpretation of statutes to the effect that we can not read a provision out of a statute that the Legislature has placed therein; that is, some meaning must be given to every phrase or word used by the General Assembly if possible. *Harig v. McCutcheon*, 23 O. App. 500; *Board of Education v. Boal*, 104 O. S. 482, 486; *State, ex rel. Brownell v. Industrial Commission*, 131 O. S. 124; *Stanton v. Realty Co.*, 117 O. S. 345, 349.

Section 1697 of the General Code provides that the cost of the publication of calendars, motion dockets and notices, specified therein, shall be taxed as costs and collected as other costs. Such section was in existence prior to the amendment of Section 10271 of the General Code which releases both the judgment creditor and the debtor from liability for costs under certain circumstances. In view of the express language of Section 10271 of the General Code releasing both the creditor and the debtor from liability for costs and in view of the fact that such section was enacted at a later date than Section 1697 of the General Code, I am of the opinion that the later enacted section must prevail over the former section to the extent inconsistent therewith.

In specific answer to your inquiry, it is my opinion that by reason of the provisions of Section 10271 of the General Code when the personal earnings of a judgment debtor have been garnisheed or attached and there has been withheld by the judgment debtor's employer, for the payment of the judgment, the portion of such wages not exempt from execution or attachment under authority of Sections 11721 and 11725 of the General Code, plus the sum of two dollars and not to exceed fifty cents for garnishee fee, neither the creditor nor the debtor is further liable for the court costs in the action, even though such excess costs include costs paid to a printer under authority of Section 1697 of the General Code which have been taxed as costs in such action.

Respectfully,

THOMAS J. HERBERT,
Attorney General.