

OPINION NO. 88-012**Syllabus:**

15 U.S.C. §1673 does not apply to lump-sum payments paid to a child support enforcement agency on behalf of an obligor pursuant to R.C. 3113.21(H)(3) and R.C. 3113.21(D)(1)(c). Therefore, the county child support enforcement agency may, if necessary, apply one hundred per cent of the lump-sum payment to that obligor's arrearages.

To: Dennis E. Barr, Hardin County Prosecuting Attorney, Kenton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 29, 1988

I have before me your request for my opinion whether the Consumer Credit Protection Act (15 U.S.C. §1671 *et seq.*) applies to lump-sum payments to a county child support enforcement agency¹ pursuant to R.C. 3113.21(H)(3). I have rephrased your question as follows:

Under 15 U.S.C §1673, may a county child support enforcement agency apply the total amount of any lump-sum payment received on behalf of a child support obligor pursuant to R.C. 3113.21(H)(3) and R.C. 3113.21(D)(1)(c) to that obligor's existing child support arrearages?

R.C. 3113.21 regulates the withholding or "garnishing" of personal earnings to pay child support obligations. R.C. 3113.21(H)(3) regulates the withholding of lump-sum payments received by the child support obligor:

Upon receipt of a notice from a bureau of support under division (G)(5) of this section that a lump-sum payment of five hundred dollars

¹ R.C. 2301.35(A) currently requires that each county designate as the county child support enforcement agency either "the county department of human services, the office of the prosecuting attorney, a bureau within the court of common pleas, or a separate agency under the direct control of the board and administered by an official appointed by the board." The reference to "a bureau within the court of common pleas," is a reference to the county "bureau of support." R.C. 2301.35 formerly required each court of common pleas to establish, by rule, a bureau of support. Although relevant statutes and cases may refer to "child support enforcement agencies," "bureaus of support," and "local Title IV-D enforcement agencies" (so-called because they are county agencies that carry out the dictates of Title IV-D of the Social Security Act), these three different names refer to the same agency. One of the purposes of recent amendments to R.C. 2301.35 was to consolidate all child support enforcement responsibilities in one county agency. For purposes of this opinion, a "child support enforcement agency" and a "bureau of support" refer to the same agency. See R.C. 3113.21(O)(3) (As used in R.C. 3113.21, R.C. 3113.211, R.C. 3113.212, and R.C. 3113.213, "'bureau of support' or 'bureau' means the child support enforcement agency designated by the board of county commissioners pursuant to section 2301.35 of the Revised Code").

or more is to be paid to the obligor, the court shall issue an order requiring the transmittal of the lump-sum payment to the bureau of support, if the obligor is in default under the support order or has any unpaid arrearages under the support order. Upon receipt of any moneys pursuant to this division, a bureau of support shall pay the amount of the lump-sum payment that is necessary to discharge all arrearages to the obligee and any amount that is remaining after the payment of the arrearages to the obligor.

R.C. 3113.21(G)(5) provides that the bureau of support shall notify the appropriate court whenever it receives any notice under, *inter alia*, R.C. 3113.21. R.C. 3113.21(D) enumerates the types of orders that a court may issue in child support enforcement cases. R.C. 3113.21(D)(1)(c) provides that in certain circumstances, an obligor's employer must notify the bureau of support (child support enforcement agency) of any lump-sum payments over \$500.00 that are to be paid to the obligor, and to withhold certain types of payments from the obligor in anticipation of the court's order. The statute provides in pertinent part:

(1)....

The [court] order shall...require the employer to do all of the following:

....

(c) Immediately notify the bureau of support of any lump-sum payments of any kind of five hundred dollars or more that are to be paid to the obligor, hold the lump-sum payments of five hundred dollars or more for thirty days after the date on which the lump-sum payments would otherwise have been paid to the obligor, if the lump-sum payments are workers' compensation benefits, severance pay, sick leave, lump-sum payments of retirement benefits or contributions, annual bonuses, or profit sharing payments or distributions, and, upon order of the court, pay any specified amount of the lump-sum payment to the bureau of support.

15 U.S.C. §1673, enacted as part of the Consumer Credit Protection Act, restricts garnishment of wages for, *inter alia*, payment of child support obligations. See generally *Donovan v. Hamilton County Municipal Court*, 580 F. Supp. 554 (S.D. Ohio 1984). 15 U.S.C. §1673 provides in pertinent part:

(a) *Maximum allowable garnishment*

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his *disposable earnings* for that week, or

(2) the amount by which his *disposable earnings* for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable, whichever is less. In the case of *earnings* for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) *Exceptions*

(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

....

(2) The maximum part of the aggregate *disposable earnings* of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such

order is used), 50 per centum of such individual's *disposable earnings* for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's *disposable earnings* for that week; except that, with respect to the *disposable earnings* of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such *earnings* are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek. (Emphasis added.)

15 U.S.C. §1673(b)(2)(A) and (B) limit the garnishment of only the "disposable earnings" of child support obligors. Accordingly, I must determine whether the lump-sum payments referred to in R.C. 3113.21(H)(3) and R.C. 3113.21(D)(1)(c) qualify as "disposable earnings" under 15 U.S.C. §1673. 15 U.S.C. §1672 defines both "earnings" and "disposable earnings" as those terms are used in 15 U.S.C. §1673:

For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual [that remains] after the deduction from those earnings of any amounts required by law to be withheld.

R.C. 3113.21(D)(1)(c) authorizes a court to require the obligor's employer to "notify the bureau of support of any lump-sum payments of any kind...that are to be paid to the obligor," to summarily withhold payment of certain types of lump-sum payments for thirty days, and "upon order of the court, [to] pay any specified amount of the lump-sum payment to the bureau of support." The current interpretations of 15 U.S.C. §1672(a) and (b) indicate that the lump-sum payments referred to in R.C. 3113.21(H)(3) and R.C. 3113.21(D)(1)(c) are not included in the term "disposable earnings" as it is used in 15 U.S.C. §§ 1672 and 1673. The United States Supreme Court has held that the terms "earnings" and "disposable earnings" are limited to "periodic payments of compensation and [do] not pertain to every asset that is traceable in some way to such compensation." *Kokoszka v. Belford*, 417 U.S. 642, 651 (1974) (citation omitted). That Court went on to note:

This view is fully supported by the legislative history. There is every indication that Congress, in an effort to avoid the necessity of bankruptcy, sought to regulate garnishment in its usual sense as a levy on periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis.

Id. The United States District Court for the Northern District of Ohio followed this holding when it decided that a lump-sum severance payment did not constitute "disposable earnings" as that term is used in 15 U.S.C. §§ 1672 and 1673. *Pallante v. International Venture Investments, Ltd.*, 622 F. Supp. 667 (N.D. Ohio 1985). The *Pallante* court quoted the Supreme Court's statement that "the terms 'earnings' and 'disposable earnings,' as used in 15 U.S.C. §§ 1672, 1673...[are] limited to 'periodic payments of compensation....'" *Id.* at 669 (quoting *Kokoszka*, 417 U.S. at 651). Based on the Supreme Court's language, the district court concluded that "'earnings' means periodic payments of compensation." *Id.* The court went on to note:

The determinative factor in deciding whether severance pay is subject to the statutory limitations is *whether the monies are received in periodic payments. The fact that a severance payment is made in a lump-sum places it outside the statutory provision....* It is when payments are periodic that severance pay "is intended to provide income similar to current earnings."....Applying this [rationale] to the

instant cause, this Court concludes that [defendant's]...lump-sum severance payment does not fall within the meaning of "earnings" or "disposable earnings" as defined in 15 U.S.C. §1672.

Id. at 669 (emphasis added) (citations omitted). Thus, by definition, the term "disposable earnings" does not include lump-sum payments, which are usually not intended to provide income similar to current earnings.²

Accordingly, it is my opinion and you are advised that 15 U.S.C. §1673 does not apply to lump-sum payments paid to a child support enforcement agency on behalf of an obligor pursuant to R.C. 3113.21(H)(3) and R.C. 3113.21(D)(1)(c). Therefore, the county child support enforcement agency may, if necessary, apply one hundred per cent of the lump-sum payment to that obligor's arrearages.

² I am aware that the Lucas County Court of Common Pleas held that the Consumer Credit Protection Act does apply to vacation pay in *Riley v. Kessler*, 2 Ohio Misc. 2d 4, 441 N.E.2d 638 (C.P. Lucas County 1982). In *Riley*, a class of employees sued to prevent one-hundred-percent garnishment of vacation benefits that were to be paid to the employees pursuant to a collective bargaining agreement just before the shutdown of production facilities for two to three weeks or longer. Although the court did not consider the definitions of "earnings" and "disposable earnings" provided in 15 U.S.C. §1672, it noted that inequity would result if creditors could garnish one hundred percent of this type of vacation pay:

Ohio considers vacation pay to be earnings for purposes of unemployment compensation....Failure to accord the same treatment to vacation pay in the context of this case would produce a situation in which a worker had no income during a temporary layoff, yet would be deemed to have earned vacation pay and thus be deprived of unemployment benefits. We cannot presume that the legislature intended such a harsh and inconsistent use of the term "earnings."

Id. at 5, 441 N.E.2d at 640. Although the *Riley* court did not discuss the issue, I note that the type of vacation payment under consideration in that case might constitute the type of payment that the Supreme Court considered to be "disposable earnings" in *Kokoszka*: "[a] periodic [payment] of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis." 417 U.S. at 651.