

**OPINION NO. 93-037****Syllabus:**

1. The statutory interest rate in effect under R.C. 1343.03 was six percent from July 1, 1962 through July 29, 1980, and eight percent from July 30, 1980 through July 4, 1982. The current interest rate in effect under R.C. 1343.03, as of July 5, 1982, is ten percent.
2. Interest under R.C. 3113.219(A) may not be assessed for time periods prior to July 15, 1992.

---

**To: John, F. Holcomb, Butler County Prosecuting Attorney, Hamilton, Ohio**  
**By: Lee Fisher, Attorney General, November 16, 1993**

You have requested an opinion concerning the computation of interest on child support arrearages. Your questions pertain to R.C. 3113.219, which was enacted by Am. Sub. S.B. 10, 119th Gen. A. (1992) (eff. July 15, 1992). R.C. 3113.219(A) provides that, in certain circumstances, a court must assess interest on child support arrearages, and further provides that interest shall be computed at the rate specified in R.C. 1343.03.

**R.C. 1343.03 Currently Provides for an Interest Rate of Ten Percent; R.C. 1343.03 Previously Provided for Interest Rates of Six and Eight Percent**

R.C. 1343.03,<sup>1</sup> as currently in effect, provides for an interest rate of ten percent per

---

<sup>1</sup> R.C. 1343.03 states:

(A) In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, *the creditor is entitled to interest at the rate of ten per cent per annum, and no more*, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract.

annum. The existing version of R.C. 1343.03 became effective on July 5, 1982. *See* 1981-1982 Ohio Laws, Part I, 2034 (Am. Sub. H.B. 189, eff. July 5, 1982). As your letter notes, an earlier version of R.C. 1343.03, effective July 1, 1962, provided for an interest rate of six percent per annum. *See* 1961 Ohio Laws 13, 173 (Am. S.B. 5, eff. July 1, 1962).

Your first question is whether a change in interest rates from six to eight percent, and a subsequent change from eight to ten percent, took place during the twenty years between 1962 and 1982. A review of Ohio statutes reveals that such a change did, in fact, occur. Am. H.B. 28, effective July 30, 1980, changed the interest rate in R.C. 1343.03 from six to eight percent per annum. *See* 1979-1980 Ohio Laws, Part I, 1466, 1467 (Am. H.B. 28, eff. July 30, 1980). The rate was changed to ten percent by Am. Sub. H.B. 189, effective July 5, 1982, as noted above.

### **R.C. 3113.219 Does Not Clearly Describe How Interest Should Be Calculated**

Your second question asks how the court should calculate the interest that it is required by R.C. 3113.219(A) to assess.<sup>2</sup> You raise the following possibilities:

Should the court apply the present statutory rate of interest of 10% per annum to all arrearages or only to arrearages between July 5, 1982, and today, or should the court apply the statutory rate which was in effect at the time each portion of an arrearage was accumulated? In the unlikely event that it is necessary to assess interest on judgments taken before 1982, must the court apply the statutory rate which was in effect on the specific date of the judgment?

---

(B) Except as provided in divisions (C) and (D) of this section, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct, including but not limited to a civil action based on tortious conduct that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid.

(C) Interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, shall be computed from the date the cause of action accrued to the date on which the money is paid, if, upon motion of any party to the action, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case.

(D) Divisions (B) and (C) of this section do not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the court of claims, or in an action under Chapter 4123. of the Revised Code. (Emphasis added.)

<sup>2</sup> R.C. 3113.219 also contains division (B), which provides for a court to include in a support order a statement requiring either party to pay the costs of the action. This opinion does not address the manner in which R.C. 3113.219(B) should be applied.

In order to respond to your question, it is necessary to examine the language of R.C. 3113.219(A), which reads:

On or after July 1, 1992, when a court issues or modifies a support order under Chapter 3115. or section 2151.23, 2151.231, 2151.36, 2151.49, 3105.18, 3105.21, 3109.05, 3111.13, 3113.04, or 3113.31 of the Revised Code or in any proceeding in which a court determines the amount of support to be paid pursuant to a support order, the court shall determine the date the obligor failed to pay the support required under the support order and the amount of support the obligor failed to pay. *If the court determines the obligor has failed at any time to comply with a support order, the court shall issue a new order requiring the obligor to pay support. If the court determines that the failure to pay was willful, the court shall assess interest on the amount of support the obligor failed to pay from the date the court specifies as the original date the obligor failed to comply with the order requiring the payment of support to the date the court issues the new order requiring the payment of support and shall compute the interest at the rate specified in section 1343.03 of the Revised Code.* The court shall specify in the support order the amount of interest the court assessed against the obligor and incorporate the amount of interest into the new monthly payment plan. (Emphasis added.)

This language does not directly address the question of what interest rate should be applied to arrearages accrued at various times.

It is interesting to note that R.C. 3113.219(A) purports to require the prescribed assessment of interest "[o]n or after July 1, 1992," although Am. Sub. S.B. 10, which enacted R.C. 3113.219, did not go into effect until July 15, 1992. *See also* R.C. 3109.05(C). It is also interesting to note the juxtaposition of tenses in the first sentence of R.C. 3113.219(A): when a court "issues or modifies" a support order or "determines" the amount of support, the court shall determine "the date the obligor failed to pay the support required under the support order and the amount of support the obligor failed to pay." It is evident that when a court modifies a support order it may find that the obligor failed to pay the support required under the order; however, if the court is issuing the order initially, the obligor could not yet have failed to pay support required under that order. The imprecise use of terms relating to time suggests that the General Assembly did not give careful attention to the temporal implications of the statutory language.

R.C. 3113.219(A) goes on to say that if the obligor has failed "at any time" to comply with a support order, the court shall issue a new order requiring the obligor to pay support. If the court determines that the failure was willful, the court shall assess interest on the unpaid amount "from the date the court specifies as the original date the obligor failed to comply with the order requiring the payment of support." R.C. 3113.219(A). The court is required to specify in the support order the amount of interest assessed and to incorporate the amount of interest into the new monthly payment plan. R.C. 3113.219(A).

#### **Interest Under R.C. 3113.219(A) May Not Be Assessed for Time Periods Prior to July 15, 1992**

On its face, the language of R.C. 3113.219(A) appears to apply to support orders issued or modified on or after July 1, 1992, and to authorize the assessment of interest on amounts that an obligor willfully failed to pay under a support order at any time, whether prior or subsequent to July 1, 1992. *See also* R.C. 3109.05(C). This language must, however, be construed in light

of provisions of Ohio law governing the retroactive application of statutes. Ohio Const. art. II, §28 provides that the General Assembly has no power to pass retroactive laws. Remedial laws do not come within this prohibition. Nonetheless, a statute that imposes a new or additional burden, duty, obligation, or liability as to past transactions is judged to be retroactive and thus to conflict with Ohio Const. art. II, §28. *See, e.g., Kilbreath v. Rudy*, 16 Ohio St. 2d 70, 242 N.E.2d 658 (1968); *Miller v. Hixson*, 64 Ohio St. 39, 59 N.E. 749 (1901). In addition, R.C. 1.48 states that a statute "is presumed to be prospective in its operation unless expressly made retrospective." Unless a statute clearly states that its operation is to be retroactive, the statute is to be given prospective application only, thereby validating the statute and avoiding any conflict with the constitutional prohibition laid down in Ohio Const. art. II, §28.

The Ohio Supreme Court considered the retroactive application of a statutory provision imposing interest charges in *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St. 3d 83, 482 N.E.2d 1248 (1985). That case concerned the provisions of R.C. 1343.03(C) that authorize a court to charge interest upon an award in a tort case if the party required to pay the money failed to make a good faith effort to settle the case and the party to whom the money is to be paid did not fail to make a good faith effort to settle the case. R.C. 1343.03(C) was enacted in 1982 by Am. Sub. H.B. 189, which, as discussed above, is the bill that changed the interest rate in R.C. 1343.03(A) from eight to ten per cent. *See* note 1, *supra*. The Ohio Supreme Court affirmed the court of appeals' determination that interest could not be awarded for the period prior to the effective date of the statute, stating, in footnote 7:

R.C. 1343.03(C)...is remedial in nature to the extent it provides procedures to remedy wrongs and abuses. However, its application does not hinge upon, nor does it seek to redress, the underlying tort. Rather, it seeks to remedy the subsequent misconduct of the losing party who fails to make a good-faith effort to settle the case. As such, the penalty imposed is an award of interest on the judgment in favor of the prevailing litigant.

This substantive benefit is to be "computed from the date the cause of action accrued to the date on which the money is paid\*\*\*." *Id.* In the instant case, the cause accrued prior to the effective date of the statute but the judgment was entered after the statute went into effect....

....

Since the statute is concerned with appellee's continuing misconduct (*i.e.*, lack of good faith in negotiating a settlement) until the time of judgment, and not the underlying tort, we believe it is appropriate to allow interest to be calculated from the effective date of the statute until "the money is paid." However, *appellee's lack of good faith occurring prior to the effective date of the statute cannot be constitutionally penalized.* Section 28, Article II of the Ohio Constitution.

19 Ohio St. 3d at 87-88 n.7, 482 N.E.2d at 1252 n.7 (emphasis added); *see also Central States Stamping Co. v. Lake County National Bank*, 587 F. Supp. 372 (N.D. Ohio 1984). *But see Huffman v. Hair Surgeon, Inc.*, 19 Ohio St. 3d at 89, 482 N.E.2d at 1253 (C. Brown, J., dissenting in part).

Like the statute under consideration in the *Huffman* case, R.C. 3113.219(A) imposes a penalty upon a person whose behavior is found to have been objectionable. R.C. 1343.03(C) imposes an interest charge upon a litigant who has failed to make a good faith effort to settle a case; R.C. 3113.219(A) imposes an interest charge upon an obligor who has willfully failed to make support payments. *See, e.g., Black's Law Dictionary* 1599 (6th ed. 1990) (defining

"willful" to mean "intentional; purposeful; not accidental or involuntary"). *See generally Johnson v. Johnson*, 71 Ohio App. 3d 713, 595 N.E.2d 388 (Portage County 1991). The finding of willfulness is necessary to bring the interest provision into effect under R.C. 3113.219(A), even as the finding of lack of a good faith effort is necessary to bring the interest provision into effect under R.C. 1343.03(C). The conclusion reached by the Ohio Supreme Court in *Huffman* is, therefore, applicable also in the situation here under consideration: an obligor's willful failure to pay occurring prior to the effective date of the statute cannot be constitutionally penalized. Accordingly, interest under R.C. 3113.219(A) cannot be awarded for the period prior to the effective date of the statute, which is July 15, 1992. *See Dunbar v. Grebler*, No. CA91-12-209, slip op. at 5 (Ct. App. Butler County Aug. 10, 1992) ("we can find nothing in Am. Sub. S.B. No. 10 which would rebut the general presumption of statutory construction that these amended and newly enacted provisions of the Revised Code [including R.C. 3113.219(A)] are to be prospective only in their operation and application" (citations omitted)).

#### **Other Interest Provisions**

You have asked about the interest that a court is required to assess under R.C. 3113.219(A) and this opinion has addressed that question. This opinion does not, however, consider whether, or in what circumstances, a court may assess interest on child support arrearages pursuant to any other statute. *See generally, e.g., Dunbar v. Grebler* (discussing R.C. 1343.03 and cases applying its provisions to child support arrearages).

#### **Conclusion**

It is, therefore, my opinion, and you are advised, as follows:

1. The statutory interest rate in effect under R.C. 1343.03 was six percent from July 1, 1962 through July 29, 1980, and eight percent from July 30, 1980 through July 4, 1982. The current interest rate in effect under R.C. 1343.03, as of July 5, 1982, is ten percent.
2. Interest under R.C. 3113.219(A) may not be assessed for time periods prior to July 15, 1992.