

**OPINION NO. 87-088****Syllabus:**

Pursuant to R.C. 2301.35(J)(1), a child support enforcement agency may not deduct any poundage fees from the payments received from an obligor who has support arrearages outstanding against him until the support arrearage debt is satisfied.

**To: Michael G. Spahr, Washington County Prosecuting Attorney, Marietta, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, November 2, 1987**

I have before me your request for my opinion on the meaning of certain language in R.C. 2301.35, which was recently amended by Sub. H.B. 231, 117th Gen. A. (1987)(effective October 5, 1987). The language concerns the payment of a "poundage" fee by child support obligors to the county child support enforcement agency. I have rephrased your question as follows:

May a child support enforcement agency deduct poundage fees from an obligor's monthly payments while the obligor has unpaid child support arrearages?

R.C. 2301.35(E) provides that the local child support enforcement agency shall operate a program for support enforcement under the supervision of the Ohio Department of Human Services. The agency shall be responsible for the collection of payments due under child support orders. R.C. 2301.35(E) further provides that the agency's support enforcement program must comply with "all applicable state and federal support regulations, including the affirmative duties of Title IV-D of the Social Security Act."<sup>1</sup> R.C. 2301.35(J)(1) requires each child support enforcement agency to collect a monthly "poundage" fee from obligors, and provides:

Whenever a court, on or after the effective date of this amendment, issues a support order or modifies a support order, regardless of when the modified support order was issued, the child support enforcement agency shall collect a fee equal to the greater of two per cent of the amount to be collected under the support order or one dollar per month from the obligor to provide funds for that part of the cost of its program for support enforcement that is not paid for by federal funds. The child support enforcement agency and the court shall enter into an agreement that provides for the agency, by December 31, 1988, to collect that fee in relation to all support orders issued prior to the effective date of this amendment, unless the date for the collection of that fee in relation to those orders is extended by mutual agreement between the child support enforcement agency and the court. Until a support order that was issued prior to the effective date of this amendment is modified to provide for the collection of a fee equal to the greater of two per cent of the amount to be collected under the support order or one dollar per month or the agency and court enter into an agreement for the collection of that fee in relation to all support orders issued prior to the effective date of this amendment, the child support enforcement agency instead shall collect the fee specified in the support order. If an obligor fails to pay the required amount, the child support enforcement agency shall maintain a separate arrearage account for that obligor. The agency shall not deduct the unpaid amount from the support payments due to the obligee. No moneys received by an agency pursuant to division (J)(1) of this section shall be used for any purpose

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<sup>1</sup> Title IV-D of the Social Security Act (42 U.S.C. §§ 651-669) requires states to establish local agencies to assist families in enforcing child support orders. With the amendments to R.C. Chapter 2301 (and to certain other relevant statutes) enacted as part of Sub. H.B. 231, one child support enforcement agency in each county will be designated to enforce support orders pursuant to R.C. 2301.35. See also 1987 Op. Att'y Gen. No. 87-022 (concerning Title IV-D generally, and Ohio's Title IV-D program before the enactment of Sub. H.B. 231).

other than the part of the cost of its program for support enforcement that is not paid for by federal funds. (Emphasis added.)

You ask whether R.C. 2301.35(J)(1) requires child support enforcement agencies to use an obligor's entire payment to pay either that month's support obligations or support obligations in arrears before it may apply any part of the obligor's payment to the amount due for the poundage fee. Apparently referring to the payment of fees, R.C. 2301.35(J)(1) provides: "If an obligor fails to pay the required amount, the child support enforcement agency shall maintain a separate arrearage account for that obligor. The agency shall not deduct the unpaid amount from the support payments due to the obligee." R.C. 1.42 provides that "[w]ords and phrases [in the Revised Code] shall be read in context and construed according to the rules of grammar and common usage." Applying this rule of construction to the language in question, I conclude that R.C. 2301.35(J)(1) requires that child support enforcement agencies not deduct any part of an obligor's payment as poundage fees until all outstanding child support payments--including any support arrearages--have been made to the obligee.

The phrase "separate arrearage account" indicates that the agency must set up an account for an obligor's arrearages in payments of poundage fees. This account would be separate from the accounts required to be kept under R.C. 2301.35(I), which provides that "[e]very child support enforcement agency shall maintain records [including]...the date on which payments are required to be made...and the current records of payments and disbursements." See also R.C. 2301.353(A). The requirement in R.C. 2301.35(J)(1) that "[t]he [child support enforcement] agency shall not deduct the unpaid amount from the support payments due to the obligee" requires that the agency not use any part of an obligor's payment as payment of poundage fees until all outstanding support debts have been paid. The phrase "unpaid amount," taken in the context of the paragraph, refers to the unpaid amount of the poundage fees. This meaning is also evident from the context of the sentence; the only other relevant "unpaid amount" is unpaid child support, which is referred to in the second part of the sentence. The General Assembly surely could not have intended to require that the child support enforcement agency "not deduct the unpaid child support from the [unpaid child] support payments due to the obligee." Accordingly, I conclude that R.C. 2301.35(J)(1) requires child support enforcement agencies to refrain from deducting money for poundage fees from obligor's payments until all support payment debts are satisfied.

This conclusion is consistent with the requirements of Title IV-D of the federal Social Security Act<sup>2</sup> (42 U.S.C. §§ 651-669). As I have already noted, one of the objectives of the amendments to R.C. Chapter 2301 contained in Sub. H.B. 231

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<sup>2</sup> This conclusion is also consistent with R.C. 3115.13, which provides for recovery of fees and costs in child support enforcement cases in which courts from Ohio and another state are involved in recovering child support from the obligor:

An initiating court shall not require payment of either a filing fee or other costs

was to ensure that Ohio's counties enforce child support orders in compliance with Title IV-D. R.C. 2301.35(E) provides specifically that each county's child support enforcement program must comply with Title IV-D of the Social Security Act:

The child support enforcement agency shall be the local Title IV-D agency and shall operate a program for support enforcement, which program shall comply with Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended, any rules adopted pursuant to that title, and sections 2301.34 to 2301.44, 3105.21, 3111.13, 3113.04, 3113.21, 3113.31, and 3115.22 of the Revised Code. The child support enforcement agency shall be operated under the supervision of the department of human services in accordance with the program of child support enforcement established pursuant to section 5101.31 of the Revised Code, shall be responsible for the collection of payments due under support orders, and shall perform all administrative duties related to the collection of payments due under any support order. The department shall ensure that all child support enforcement agencies comply with all applicable state and federal support regulations, including the affirmative duties of Title IV-D of the Social Security Act. (Emphasis added.)

Federal regulations adopted pursuant to Title IV-D permit states to recover support enforcement program costs in the manner specified in R.C. 2301.35(J)(1). 45 C.F.R. 302.33(d) provides in pertinent part:

Recovery of costs. (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section....

The fee collected pursuant to R.C. 2301.35(J)(1) is collected "to provide funds for that part of the cost of [the agency's]

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from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee. (Emphasis added.)

program for support enforcement that is not paid for by federal funds."<sup>3</sup> Federal regulations put further limits on the collection of money to recover costs. 45 C.F.R. 302.33(d)(3) provides:

The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

In the absence of any statutory or administrative definition, I must interpret "current support owed" to mean the support that the obligor owes the obligee at the time that a payment is made. See Perrin v. United States, 444 U.S. 37, 42 (1979)(citations omitted)("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning"). Accordingly, I must conclude that the rule requires that none of an obligor's payment be applied to payment of fees until any support payments owed--including any support arrearages then owed--have been paid.

Pursuant to R.C. 2301.35(E), R.C. 2301.35(J)(1) must be interpreted to comply with the Title IV-D requirement in 45 C.F.R. 302.33(d)(3) that child support obligees receive all support that is owed them before the child support enforcement agency may deduct any poundage fees. Accordingly, the language in R.C. 2301.35(J)(1) that provides that "[t]he agency shall not deduct the unpaid amount from the support payments due to the obligee," must be interpreted to require child support enforcement agencies to use all of an obligor's payment to pay outstanding support until all "support payments due to the obligee" have been paid. Although a result of this interpretation may be that an agency will not receive poundage fees at all on some accounts, and only after a great while on others, such a result is preferable to permitting the agency to withhold court-ordered child support funds from obligees. See generally R.C. 1.49(E).

Accordingly, it is my opinion and you are advised that pursuant to R.C. 2301.35(J)(1), a child support enforcement agency may not deduct any poundage fees from the payments received from an obligor who has support arrearages outstanding against him until the support arrearage debt is satisfied.

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<sup>3</sup> I note that this fee is distinct from the application fee provided for in federal regulations at 45 C.F.R. 302.33(c) and in state regulations at Ohio Administrative Code Rule 5101-7-955 at 76 (emergency rule)(1987-88 monthly rules). Under 45 C.F.R. 302.33(c)(2)(iv)(A), the application fee must be a flat dollar amount currently not allowed to exceed twenty-five dollars.