

The State of South Carolina



Office of the Attorney General

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October 14, 1986

Mr. Robert E. David
Executive Director
South Carolina Employment Security Commission
Post Office Box 995
Columbia, South Carolina 29202

Dear Mr. David:

You have requested an opinion as to whether § 20-7-1315, 1976 Code of Laws as amended, empowers Family Courts to issue orders which, if complied with by the Employment Security Commission, could result in the Commission's being declared out of conformity with federal unemployment law.

The unemployment insurance (UI) funds expended by the Employment Security Commission are funds created and administered through statutes which must conform to congressionally prescribed standards. People v. United States, 328 U.S. 8, 10 (1946). 26 U.S.C. § 3304(a)(4) requires that state laws providing for the disbursement of UI funds must provide that "all money withdrawn from the unemployment fund of the State shall be used solely for the payment of unemployment compensation...." Section 303(a)(5) of the Social Security Act, 42 U.S.C. § 503(a)(5), is similar. However, § 303(e)(2)(A)(iii), 42 U.S.C. 503 (e)(2)(A)(iii), requires ESC to deduct and withhold child support obligations and to pay such amounts to the appropriate State, or local child support enforcement agency. § 303(e)(2)(A)(iv).¹

The U.S. Department of Labor has notified ESC that certain aspects of § 20-7-1315 are not in conformity with federal statutes. 26 U.S.C. § 3304(c) requires the Department of Labor to "decertify" any State whose statutes do not conform to federal

¹ § 303(e)(1)(B) provides that "the term 'child support obligations' only includes obligations which are being enforced pursuant to [a State plan approved under § 42 U.S.C. § 654]."

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law, including the aforementioned provision of 26 U.S.C. § 3304(a)(4). § 303(e)(3) is similar to 26 U.S.C. § 3304(c).

The Department of Labor has raised the following three objections to § 20-7-1315:

- (1) It makes no provision for channeling child support payments through the State child support agency, as § 303(e) requires.
- (2) There is no provision for reimbursement to ESC by the state child support agency for the expenses of serving as a collection agency, as required by § 303(e)(2)(C).
- (3) § 20-7-1315(E)(2)(a) requires ESC to withhold court costs in the amount of 3% of the support obligation. § 303(e) does not authorize this deduction from UI payments.

1. Channeling funds through the State child support agency.

Section 454(3) of the Social Security Act, 42 U.S.C. § 654(3), requires a State plan for child and spousal support to designate a single state organizational unit to administer the plan. The South Carolina State Plan designates the DSS Division of Child Support Enforcement as this State's single organizational unit. § 303(e)(2)(A)(iv) requires amounts deducted from UI funds to be paid to the "State or local child support enforcement agency," a term which § 303(e)(4) defines as the agency designated under § 454(3) of the Act. In other words, the deducted amounts from UI funds must be paid to the DSS Office of Child Support Enforcement. Nothing in § 20-7-1315 requires payment to DSS; indeed § 20-7-1315(E)(5) requires payments to be made to Clerks of Court. However, pursuant to cooperative agreements between all 46 County Clerks' offices and DSS, the amounts paid to the Clerks are transmitted to DSS for distribution. See State Plan, p. 3.1 - A. It would therefore appear that in practice, in cases enforced through DSS, South Carolina is acting in conformity with the requirements of the Social Security Act even though the face of § 20-7-1315 might suggest otherwise. § 41-35-140(c), a 1983 enactment which is similar to § 303(e)(2) through § 303(e)(4) of the Social Security Act, requires any UI funds withheld by ESC to be paid to DSS. If, as it appears, § 20-7-1315 merely appoints the Clerks of Court as conduits for payment to DSS in cases enforced by DSS, § 41-35-140(c) and § 20-7-1315 are not in conflict in such cases. Moreover, no statutory change should be necessary for AFDC cases, because state law, § 41-35-140(c), already directs that UI funds "must" be paid to DSS.

For those cases in which the support enforcement order is not made as a result of action by the DSS Child Support Office, it would appear that § 20-7-1315 does conflict with federal UI law. Section 303(e)(1) provides that UI funds may be withheld by ESC only in cases enforced by DSS. If the State is to remain in

conformity with federal law, 20-7-1315 should be amended to limit its effect on UI funds to only those cases enforced through DSS.

2. Reimbursement of ESC's expenses. § 41-35-140(f) requires DSS and ESC to make appropriate arrangements for ESC's administrative expenses. The writer is informed that there is such an administrative arrangement; it has not yet been implemented because ESC until recently has incurred no expenses, but implementation is apparently about to occur. No statutory change is necessary to accomplish this since § 41-35-140(f) requires it.

3. Court costs.

§ 303 of the Social Security Act does not expressly permit the deduction of court costs as part of child support obligations, but such costs have traditionally been awarded in child support cases, and there is no indication that Congress intended to eliminate this traditional aspect of the support obligation when UI funds are used to pay it. Cf., however, Jordan v. Fusari, 422 F. Supp. 1179 (D. Conn. 1975) (UI law does not permit award of attorneys fees in suit to recover UI benefits). This Office is therefore of the opinion that this aspect of § 20-7-1315 does not necessarily contravene federal law. However, this Office would welcome further discussion of this point with the Department of Labor.

4. § 41-39-20.

Finally, ESC has suggested that § 20-7-1315 conflicts with § 41-39-20, an anti-attachment statute. However, § 41-39-20 was amended in 1983 to permit attachments, etc., for DSS - enforced child support obligations as authorized by § 41-35-140, the 1983 enactment discussed above. As matters presently stand, § 20-7-1315, as the later enactment, would probably supersede the prohibition of § 41-39-20. It is possible that a court would conclude that in order for § 20-7-1315 to be harmonized with § 41-39-20 and with federal law, it should not be read as authorizing garnishment of UI funds in non-AFDC cases. The simpler and better solution, however, would probably be to seek an amendment to § 20-7-1315 which would reflect this.

To summarize, it is the opinion of this Office that:

- (1) State law and practice regarding channeling of payments through DSS are in conformity with federal law in cases enforced by DSS, but not in cases enforced other than by DSS.
- (2) An appropriate agreement between DSS and ESC has been entered pursuant to § 41-35-140(f) and when implemented should eliminate any concern over reimbursement of administrative expenses.
- (3) The court cost provision of § 20-7-1315 does not necessarily conflict with federal law, but further

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discussion with the Department of Labor is probably necessary to clarify this point.

- (4) § 20-7-1315 probably supersedes the anti-garnishment provisions of § 41-39-20.

This Office will be glad to assist in any further developments resulting from the apparent statutory conflicts described above.

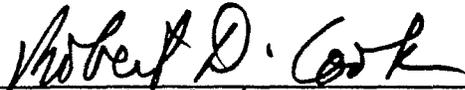
Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

KPW:jca

Reviewed and approved:



Robert D. Cook
Executive Assistant, Opinions