

1973 WL 26643 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 6, 1973

***1 Re: Supplementary Proceedings—Wage Garnishment**

James C. Harrison, Jr.
Assistant Attorney General

You have requested that I prepare some information for your response to North Carolina State Senator Donald R. Kincaid concerning whether or not South Carolina has a law whereby bad debts may be garnished through the wages of an individual.

The applicable statute is Section 10-1731, South Carolina Code Ann. (1962). Section 10-1731 provides a post-judgment proceeding whereby the judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

If this were as far as the statute went it would be clear that South Carolina had a fairly workable wage garnishment statute. The Section continues as follows, however:

‘ . . . except that the earnings of the debtor for his personal services at any time within sixty days next proceeding the order cannot be so applied when it is made to appear by the debtor's affidavit or otherwise that such earnings are necessary for the use of a family supported wholly or partly by his labor; provided, that notwithstanding the limitation set forth in this section, an amount not exceeding fifteen per cent of the judgment debtor's wages, salary, fees or commissions due or to become due under any existing contract of employment may be immediately ordered, in the discretion of the judge, to be so applied when the judgment is for the balance due upon food, fuel or medicine accounts, but no more than one hundred dollars may be so applied to any such judgment. In exercising such discretion the judge shall take into special consideration the needs of the debtor's family as well as the rights of the creditor.’ Section 10-1731, South Carolina Code Ann. (1962)

As you see the statute becomes extremely limited. It was the opinion of my Debtor's and Creditor's Rights teacher that most practicing attorneys in South Carolina believe, and are justified in their belief, that for all practical purposes there is no wage garnishment statute.

The wage garnishment portion of Section 10-1731 has received little reported judicial consideration. In [Union Bank v. Northrop](#), 19 S.C. 473 (1883) it was held that though a certain attorney's fee was shown to be ‘due for the personal services of the defendant’ the fee was not ‘earnings within sixty days next proceeding the order’ and was therefore not exempt from execution under the section. The case held that the ‘order’ referred to in the statute was the order directing the money to be applied toward the satisfaction of the judgment and not the order for examination of the judgment debtor in supplementary proceedings.

The wage garnishment portion of the Section has been referred to one additional time; that a mere passing reference in [John Deere Company v. Cone](#), 239 S.C. 597, 124 S.E.2d 50 (1962). This mention may hold importance, however, due to the more recent date and the implication that the Court believes the statute still holds life:

***2** ‘ . . . that procedure [referring to Section 10-1731] [p]rovides certain restrictions on the amount of the judgment debtor's earnings, derived from personal services, that may be applied to the satisfaction of the judgment . . . ’

It is notable that Section 10-1731 does not possess the fault which the United States Supreme Court has recently found with some other creditors' remedies. The Section provides a post-judgment proceeding, therefore the debtor has already received a hearing before any attempted enforcement may commence.

Also notable is the fact that any garnishor acting under the South Carolina statute must pay heed to the wage garnishment provisions of the federal 'Truth in Lending' Act. These provisions would be applicable and are apparently even more limiting upon wage garnishment. See [15 U.S.C.A. §§ 1671-1677](#), especially [§ 1677](#).

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