S T A T E O F T E N N E S S E E
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Opinion No. 01-145

Sheriff's entitlement to fees on first wage garnishment

QUESTION

When a first garnishment summons is served on an employer under Tenn. Code Ann. § 26-2-216(b)(1), is a sheriff entitled, under Tenn. Code. Ann. § 8-21-901(a)(25)(A), or other authority, to collect commissions on incremental wage payments later mailed by the employer to the court clerk?

OPINION

Tenn. Code Ann. § 8-21-901 entitles a sheriff or other officer who serves a first wage garnishment to collect a flat fee for summoning a garnishee, as prescribed by Tenn. Code Ann. § 8-21-901(a)(17) & (b)(17), and a fee for collecting money on execution that is based on the amount collected, as prescribed by Tenn. Code Ann. § 8-21-901(a)(25) & (b)(25). The incremental wage payments must be considered in calculating the latter fee.

ANALYSIS

Under Tenn. Code Ann. § 26-2-216(b)(1), a sheriff or other officer serving a wage garnishment summons has certain duties with respect to service of the garnishment, including return of the summons to the court with the proper acknowledgment. The employer garnishee is then required to pay monies in installments directly back to the clerk, and the sheriff has no other participation. Your question arises in that some clerks of court are of the opinion that Tenn. Code Ann. § 8-21-901(a)(25) entitles sheriffs to collect fees on all money returned as a result of the execution of the garnishment, although other clerks do not read the statute as entitling the sheriff to receive a portion of wages paid over time by an employer.

A garnishment of wages is a lien on non-exempt compensation due at the time of service of the execution. Tenn. Code Ann. § 26-2-214. Such lien continues as to subsequent earnings until the judgment is satisfied, or until the expiration of the employer's payroll period immediately prior to six calendar months after service of the execution, whichever occurs first. Tenn. Code Ann. § 26-2-214(b)(1). An employer garnishee must remit to the court all moneys withheld as provided under § 26-2-214 not less than one time

each 30 calendar days. Tenn. Code Ann. § 26-2-215. Thus, your question concerns the incremental wage payments that the employer makes to the court clerk as a result of the garnishment.

In Op. Tenn. Atty. Gen. 98-190 (October 8, 1998), this Office opined that Tenn. Code Ann. § 8-21-901 appears to authorize a sheriff to collect two fees in relation to service and execution of a garnishment: a flat fee for summoning a garnishee under Tenn. Code Ann. § 8-21-901(a)(17), and a fee for collecting money on execution under Tenn. Code Ann. § 8-21-901(a)(25) or Tenn. Code Ann. § 8-21-901(b)(25), based on the amount of money collected. It is our opinion, therefore, that a sheriff or other officer who serves a first wage garnishment is, in fact, entitled to collect the fee or commission authorized by Tenn. Code Ann. § 8-21-901(a)(25) or (b)(25) on the incremental wage payments later mailed by the employer to the clerk. Such opinion is consistent with case law recognizing that a sheriff is entitled to a fee or commission for collecting money on execution when "the money is collected by him or paid to another by virtue of such levy." *In re Whitley*, 2 F.2d 889, 890 (W.D. Tenn. 1924).

It should be noted, however, that the fee for collecting money on execution is based on the amount collected. The statue provides:

> The sheriff or constable is entitled to demand and receive for the following services the respective following fees where such services are actually rendered:
>
> (A) For collecting money on execution, on the first one hundred dollars ($100)..$7.50
> (B) For every one hundred dollars ($100) over one hundred dollars ($100) and not exceeding three hundred dollars ($300).....6.00
> (C) For every one hundred dollars ($100) over three hundred dollars ($300).....5.00

Tenn. Code Ann. § 8-21-901(a)(25)(A)(B) & (C). *See also* Tenn. Code Ann. § 8-21-901(b)(25) (providing fee for collecting money on execution in counties having a population in excess of two hundred thousand according to the 1980 or any subsequent federal census).

Under this statute, we do not think the sheriff is entitled to collect a fee of $7.50, for example, on each separate installment paid pursuant to a first garnishment. But the sheriff is entitled to have each installment considered in figuring his fee or commission. If, for illustration purposes only, the first installment is $50, the sheriff is entitled to no commission from that installment check because $100 has not yet been collected. But if the second installment is another $50, then the amount of $100 has been collected, and the sheriff is entitled to his fee for the first $100 collected, etc. Therefore, assuming the incremental wage installments total $500, the sheriff would be entitled to a fee of $7.50 on the first $100 collected; another $6.00 when $200 was collected; $6.00 when $300 was collected; $5.00 when $400 was collected; and $5.00 when $500 was collected.

The sheriff is not entitled, however, to a commission on incremental wage payments by an employer in the case of successively served garnishments. Tenn. Code Ann. § 26-2-106(c) provides that the costs to be paid by the judgment debtor "shall not include commissions for sheriffs on any garnishment after the original garnishment and the total amount of any such costs shall not exceed three dollars ($3.00) for any garnishments after the original." *See* Opinion 98-190 (copy attached).

Accordingly, for the foregoing reasons, it is our opinion that Tenn. Code Ann. § 8-21-901 entitles a sheriff or other officer who serves a first wage garnishment to collect a flat fee for summoning a garnishee, as prescribed by Tenn. Code Ann. § 8-21-901(a)(17) & (b)(17), and a fee for collecting money on execution that is based on the amount collected, as prescribed by Tenn. Code Ann. § 8-21-901(a)(25) & (b)(25). The incremental wage payments must be considered in calculating the latter fee.

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