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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

In reply refer to:
B-198195

SEP 23 1980

[Compliance of Railroad Retirement Board with Writ of Garnishment]

Dale G. Zimmerman, Esq.
General Counsel
Railroad Retirement Board
844 Rush Street
Chicago, Illinois 60611

Dear Mr. Zimmerman:

This is in reply to your letter of March 20, 1980, to the Comptroller General of the United States requesting advice as to whether the Railroad Retirement Board may comply with a Writ of Garnishment issued by a Washington State court against an annuity payable to a retired railroad employee under section 2(a) of the Railroad Retirement Act, 45 U.S.C. § 231a (1976).

As you know, the Railroad Retirement Board has all duties and powers necessary to administer annuity payments under the act, and its decisions upon issues of law and fact relating to such annuities are not subject to review by our Office. 45 U.S.C. § 231f(b) (1976). Accordingly, the information we are furnishing here is advisory only.

You indicate that the question arises due to an apparent conflict between the garnishment provisions of title 42, United States Code, and Chapters 6 and 7 of the Revised Code of Washington (RCW). Section 459(a) of the Social Security Act, 42 U.S.C. § 659(a) (Supp. I, 1977), provides:

"Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to an individual, including members of the armed services, shall be subject, in

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like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments."

Pensions and annuities are considered "moneys (the entitlement to which is based upon remuneration for employment)." 42 U.S.C. § 662(f)(2).

You indicate that the Railroad Retirement Board has interpreted section 659(a) to apply to railroad retirement benefits in states where retirement benefits paid by non-governmental entities would be subject to garnishment for child support or alimony. However, you note that although section 659(a) authorizes garnishment of pensions or annuities paid by the Federal Government in the limited circumstances involving child support or alimony, the Revised Code of Washington appears to exempt from garnishment Federal pensions paid to state citizens. RCW § 6.16.030 (1976). This is an affirmative defense to a garnishment action. You also note that under RCW Chapter 7, pension payments by private entities are subject to garnishment. See RCW § 7.33.010(3).

Therefore, you indicate that if the Board considers itself a "private person" for garnishment purposes, the annuities paid by the Board appear subject to garnishment under Chapter 7, RCW. However, as payments of Railroad Retirement benefits these payments might be subject to the provision of state law exempting "pensions from the Government of the United States" from garnishment.

The Office of Personnel Management has recently issued regulations under 42 U.S.C. § 661 establishing uniform procedures for the processing by the executive branch of garnishment orders for child support and alimony. Those regulations became effective August 21, 1980. They provide rules for honoring legal process in part as follows (section 581.305):

"(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

"(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued * * *".

Also, section 581.305(d) implementing 42 U.S.C. § 659(f) provides that neither the United States, any disbursing officer, nor governmental entity shall be liable for any payment of moneys to any individual pursuant to legal process "regular on its face," if such payment is made pursuant to those regulations. 45 Fed. Reg. 48,852 (1980) (to be codified in 5 C.F.R. § 581.305).

The inquiry into facial validity is an examination of the procedural aspects of the legal process involved, not the substantive issues. Whether a process conforms or is regular "on its face" means just that. Facial validity of a writ need not be determined "upon the basis of scrutiny by a trained legal mind," nor is facial validity to be judged in light of facts outside the writ's provisions which the person executing the writ may know. Aetna Insurance Co. v. Blumenthal, 29 A. 2d 751, 754 (Conn. 1943).

You do not indicate that in the present case the writ of garnishment was issued by a court without jurisdiction to issue such writs or that the writ did not comply with the state's formal requirements. Rather, your concern is based on a matter not apparent on the face of the writ, namely, the interpretation and effect to be given the various provisions of law mentioned above. Here the procedural requirements seemed to have been met. The question of the affirmative defense should be litigated in the Washington state courts by the recipient of the pension.

Therefore, it appears that the Board may comply with the garnishment writ and in doing so would be protected from liability by 42 U.S.C. § 659(f). I trust this will be of help to you.

Sincerely yours,

MILTON J. SOCOLAR

Milton J. Socolar
General Counsel