

LETTER OPINION
93-L-68

March 2, 1993

Peter H. Furuseth
State's Attorney
P.O. Box 2047
Williston, ND 58802-2047

Dear Mr. Furuseth:

Thank you for your February 10, 1993 letter concerning whether a judgment debtor may claim the exemptions under N.D.C.C. ch. 28-32 or N.D.C.C. ch. 32-09.1 when the judgment debtor is being garnished pursuant to N.D.C.C. ch. 32-09.1.

Section 32-09.1-03 places certain restrictions on garnishment of earnings. Your question stems from former Attorney General Spaeth's February 19, 1991 letter which stated that a writ of execution must be issued by the court to attain the property or money in the garnishee's possession. Letter from Attorney General Spaeth to State's Attorney Peter H. Furuseth at 3 (Feb. 19, 1991). Because a writ of execution must be issued pursuant to N.D.C.C. ch. 28-21 to attain the property or money in the garnishee's possession, you ask whether the exemptions of N.D.C.C. ch. 32-09.1 or N.D.C.C. ch. 28-22 apply to the property or money subject to the garnishment.

N.D.C.C. ch. 32-09.1 provides that a creditor may garnish a debtor's property in the possession of another. N.D.C.C. ? 32-09.1-02 provides that N.D.C.C. ch. 32-09.1 "is the exclusive procedure which may be used to execute on earnings of a debtor while those earnings are held by a third party employer."

N.D.C.C. ? 28-22-01 provides that except as otherwise provided, the property mentioned in chapter 28-22 is exempt "from attachment or mesne process and from levy and sale upon execution and from any other final process issued from any court." Thus, unless there is an exception to chapter 28-22, the exemptions found in chapter 28-22 apply to property or funds garnished pursuant to N.D.C.C. ch. 32-09.1.

N.D.C.C. ? 28-22-18 provides a specific exemption with

Peter H. Furuseth
March 2, 1993
Page 2

regard to wages of a debtor. It states that "[t]he wages of a debtor are exempt from all process or levy only to the extent provided in section 32-09.1-03." Thus, if the property being garnished is wages of a debtor the exemptions provided in section 32-09.1-03 apply, rather than those in chapter 28-22.

With regard to exemptions or property garnished other than wages of a debtor, the exemptions of chapter 28-22 apply because there is no exception providing otherwise. N.D.C.C. ch. 32-09.1 places no restrictions on garnishment except with regard to earnings, indicating that the exemptions of chapter 28-22 apply to garnished property other than wages of a debtor. Furthermore, section 32-09.1-22 specifically incorporates the procedures for claiming exemptions found in section 28-22-07. Because neither chapter 28-22 nor 32-09.1, nor any other provision of the North Dakota Century Code provides otherwise, the exemptions found in chapter 28-22 apply to all garnished property except wages of a debtor.

In conclusion, it is my opinion that wages of a debtor are exempt from garnishment only to the extent provided in N.D.C.C. ? 32-09.1-03. All property being garnished other than earnings is subject to the exemptions found in N.D.C.C. ch. 28-22.

I hope I have adequately responded to your question.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

dab/mh

Peter H. Furueth
March 2, 1993
Page 3

Peter H. Furueth

Peter H. Furueth
March 2, 1993
Page 4

State's Attorney
P.O. Box 2047
Williston, ND 58802-2047

Peter H. Furueth
March 2, 1993
Page 5