



19369

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-204109

August 19, 1981

John A. Howard, Esq.
1367 East Sixth Street
Cleveland, Ohio 44114

Der Mr. Howard:

We refer to your June 1, 1981 letter, wherein you call our attention to the Judgment Entry (copy of which you attached) in the case of Kienzle v. Kienzle, Court of Common Pleas, Domestic Relations Division, Cuyahoga County, Ohio, Case No. 80D-117886. You specifically request that we comply with paragraph 13 of the Judgment Entry which orders Richard G. Kienzle's employer, the General Accounting Office, to withhold \$153 each biweekly pay period until further order of the court and forward this amount to the Clerk of Court, Alimony Section, Justice Center, Cleveland, Ohio. For reasons given below we are unable to comply with this provision of the Judgment Entry.

Under 42 U.S.C. § 659(a), the United States has waived its sovereign immunity to a limited extent to provide for the enforcement of state writs (in the nature) of garnishment against the United States (or an agency thereof) as a garnishee when the garnishment is to enforce the legal obligation of an employee of the United States to provide child support or alimony. See, e.g., Overman v. United States, 563 F.2d 1287, 1291-1292 (8th Cir. 1977). This limited waiver of sovereign immunity does not create a new statutory right under Federal law to garnish Federal employees' wages but rather merely makes the United States subject to the jurisdiction of a state court for garnishment proceedings under state law. See Diaz v. Diaz, 568 F.2d 1061 (4th Cir. 1977).

Accordingly, for a Federal agency to honor a writ of garnishment, the writ of garnishment, among other things, must be to enforce a legal obligation to pay alimony or child support, and it must be in conformity with state law.

With the above principles in mind, the reasons for our inability to comply with the Judgment Entry are that it contains internal inconsistencies which make the purpose

518575

of withholding by the General Accounting Office unclear and that it does not appear to conform to state law.

Paragraph 3 of the Judgment Entry requires the defendant to pay \$300 per month as child support through the Clerk of Court. Paragraph 6 requires the defendant to pay alimony of \$300 per month for 6 months commencing January 22, 1981, and paragraph 7 awards judgment to the plaintiff of \$640 for arrearages on the temporary order of support of the minor child and indicates execution may issue. In view of these paragraphs, we cannot discern the purpose of paragraph 13 which requires the General Accounting Office to withhold \$153 each biweekly pay period and forward it to the Clerk of Court, Alimony Section.

Since the defendant has been ordered to make various payments himself for alimony and child support, we are perplexed as to the purpose of the withholding by the General Accounting Office. We specifically note that the defendant is under court order to pay child support to the court, the defendant's obligation to pay alimony terminated on June 22, 1981, and there would appear to have been an execution issued for the arrearages on the temporary order for child support. Moreover, the withholding of \$153 per biweekly pay period does not conform to any of the amounts designated for child support or alimony. Thus, although paragraph 13 identifies the recipient of the withholding as being within the Alimony Section, we cannot discern the purpose for which we would withhold and forward the \$153 of Mr. Kienzle's biweekly remuneration.

Even without the internal inconsistencies of the Judgment Entry, we would be unable to withhold a portion of Mr. Kienzle's salary. Authority, in Ohio, to require an employer to withhold earnings for alimony or child support arrearages is Ohio Rev. Code Ann. § 3113.21 (Supp. 1981), which requires that the employer be given notice prior to the hearing on the matter. We received no such notice.

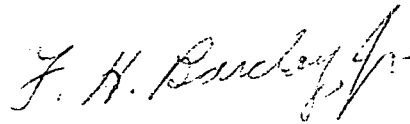
Additionally, the applicability of this code provision to the instant case is questionable. The code provision only applies to arrearages for alimony and child support ordered under certain other code provisions. While the Judgment Entry specifies that Mr. Kienzle owes an amount for temporary

B-204109

child support, the Judgment Entry does not specify under what code provision such temporary child support was ordered.

Since the authority to garnish a Federal employée's pay is strictly limited, until the inconsistencies noted above are clarified by the court so that we are assured that the court's order is consistent with state and Federal law, we are unable to comply with the request to withhold from Mr. Kienzle's pay.

Sincerely yours,



For Harry R. Van Cleve
Acting General Counsel