

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-12

Date issued: July 18, 1989

Requested by: Dennis Edward Johnson
McKenzie County State's Attorney

- QUESTION PRESENTED -

Whether a clerk of court may issue an income withholding order, pursuant to the provisions of N.D.C.C. ch. 14-09, with respect to income from mineral interests owned by a person delinquent in the payment of a child support obligation.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a clerk of court may issue an income withholding order, pursuant to the provisions of N.D.C.C. ch. 14-09, with respect to income from mineral interests owned by a person delinquent in the payment of a child support obligation.

- ANALYSIS -

North Dakota law requires the clerk of court to serve an income withholding order on an "income payor" who owes income to any person who owes a duty of support and whose support payment is delinquent. N.D.C.C. " 14-09-09.10 to 14-09-09.16. The law defines "income" and "income payor" for the purposes of income withholding orders as follows:

6. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workers' compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
7. "Income payor" means any person, partnership, firm, corporation, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.

N. D. C. C. ' 14-09-09.10, as amended by 1989 N.D. Sess. Laws ch. 69, ' 9, and

1989 N. D. Sess. Laws ch. 148, ' 5.

This definition of income is very broad, encompassing "any form of payment, regardless of source." The broadly drawn definition of the term "income" is mirrored by an equally broad definition of the term "income payor," which includes anyone or any entity "owing income to an obligor."

A check or draft is a "form of payment." If the obligor is entitled to a payment because of ownership of a mineral interest, the payment is "owed" to that obligor. The company making such a payment is within the definition of an "income payor."

Therefore, it is my opinion that if the facts otherwise support the issuance of an income withholding order, N. D. C. C. ' 14-09-09.16 requires the clerk of court to serve an income withholding order on an oil company that pays oil and gas income derived from mineral interests to a delinquent obligor owning those mineral interests.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Blaine L. Nordwall
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