



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL  
BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

December 19, 1985

Mr. Reginald R. Reeves  
Denman & Reeves  
P. O. Box 1841  
Idaho Falls, ID 83401

RE: Child Support/Garnishment

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION AND IS  
SUBMITTED SOLELY TO PROVIDE INFORMAL LEGAL GUIDANCE

Dear Mr. Reeves:

The Department of Health and Welfare's Bureau of Support Enforcement has asked us to respond to your letter of October 30, 1985, regarding garnishments in child support cases. You advise that some local prosecutors in your area are requiring an application or motion to the court as a condition precedent to the issuance of a "continuing" garnishment directed to the employer of a parent who is delinquent on his or her support obligation. You question whether such a motion is necessary.

As you correctly indicate, Idaho Code § 11-103(b) imposes no requirement that an application be addressed to the court in order for a child support garnishment to be deemed continuing in nature. That statute provides in relevant part:

Where an execution or a garnishment against earnings or unemployment benefits for a delinquent child support obligation is served upon any person or upon the state of Idaho and there is in possession of such

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person or the state of Idaho any such earnings or any unemployment benefits of the judgment debtor, the execution and the garnishment shall operate continuously and shall require such person or the state of Idaho to hold the nonexempt portion of earnings or unemployment benefits of each succeeding earnings or unemployment benefits disbursement interval until released by the sheriff at the written request of the judgment creditor or until the judgment for child support debt ... is discharged or satisfied in full; ...

The quoted language renders these garnishments automatically continuous. The statute does not require any special procedure before any court.

You indicate that some local officials have interpreted § 8-509(b) as imposing a requirement that a written motion be directed to the court and an order obtained from the clerk before any garnishment (including those for child support directed to employers) can be deemed continuing in nature. We disagree with this interpretation.

Subsection (b) was added to § 8-509 by the legislature in 1985. That paragraph states in part:

When the garnishee is the employer of the judgment debtor, the judgment creditor, upon application to the court, shall have issued by the clerk of court, a continuing garnishment directing the employer-garnishee to pay to the sheriff such future monies coming due to the judgment debtor as may come due to said judgment debtor as a result of the judgment debtor's employment. ...  
(emphasis supplied)

This section does seem to contemplate a formal motion directed to a court before a "continuing" garnishment may issue. The question thus becomes whether § 8-509(b) can be reconciled with § 11-103(b) or whether the two provisions are in conflict.

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If there is an irreconcilable conflict between § 11-103(b) and § 8-509(b), the most recent enactment, § 8-509(b), would govern. See, Rydalch v. Glauner, 83 Idaho 108, 113, 357 P.2d 1094, 1097 (1961); St. v. Mayer, 81 Idaho 111, 116, 338 P.2d 270, 273 (1959). However, it is a well recognized rule of statutory construction that where two statutes which seem to address the same subject matter can be reconciled and construed so as to give effect to both, it is the duty of the courts to so construe them. See, St. v. Roderick, 85 Idaho 80, 84, 375 P.2d 1005, 1007 (1962); Idaho Wool Marketing Ass'n v. Mays, 80 Idaho 365, 371, 330 P.2d 337, 340 (1958); Storeth v. St., 72 Idaho 49, 51, 236 P.2d 1004, 1005 (1951).

Sections 8-509(b) and 11-103(b) are only inconsistent if the former statute is construed to apply to garnishments for child support obligations directed to the employer of a delinquent parent. If faced with this question, a court could either rule that § 11-103(b) had been impliedly modified by § 8-509(b), or interpret the statutes so as to remove any contradiction. The latter is the preferred course of action. St. ex rel. Good v. Boyle, 67 Idaho 512, 523, 186 P.2d 859, 866 (1947); Golconda Lead Mines v. Neill, 82 Idaho 96, 101, 350 P.2d 221, 223 (1960).

The clearest means of resolving any conflict would be to limit the application of § 8-509(b) to all garnishments except those specifically addressed in § 11-103(b). Section 8-509 could simply be deemed irrelevant to child support garnishments since that subject matter is covered by § 11-103(b).

We believe that § 8-509(b) must be read in the preexisting statutory context and, therefore, be viewed as applying solely to those garnishments which are not otherwise rendered automatically continuing by prior law. Through this construction, a conflict between the provisions can be avoided and both statutes can continue to coexist. It is, therefore, our conclusion that the "application to the court" cited in § 8-509 is not necessary in child support enforcement efforts aimed at a delinquent parent's employer; this latter class of cases is addressed by § 11-103(b) and garnishments falling within the scope of that section are automatically deemed continuing.

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Thank you for your inquiry. If you have any further questions, please do not hesitate to contact us.

Yours truly,



P. Mark Thompson  
Deputy Attorney General  
Chief, Administrative Law and  
Litigation Division

PMT/jas

cc: Deborah Kristal  
Child Support Enforcement  
Department of Health & Welfare