cancy, and the applicant must expend monies in order to make that interview, it is altogether reasonable and proper that such expenses be reimbursed, under the appropriate safeguards.

Sincerely yours,
MARK P. WIDOFF
Deputy Attorney General
ISRAEL PACKEL
Attorney General

OFFICIAL OPINION No. 67

Labor and Industry—Foreign wage attachments are not entitled to full faith and credit in Pennsylvania

1. Pennsylvania employes may not have their wages garnished by nonresident creditors who obtain judgments in foreign juriadictions and then attempt to enforce such judgments by serving the employer of the debtor with a foreign garnishment notice where such employer maintains an office in the foreign jurisdiction as well as in Pennsylvania.

Harrisburg, Pa.
October 5, 1973

Honorable Paul J. Smith
Secretary
Department of Labor and Industry
Harrisburg, Pennsylvania

Dear Secretary Smith:

You have requested our opinion on the question of whether wages of Pennsylvania employes may be garnished in Pennsylvania by creditors who obtain judgments in foreign jurisdictions. Specifically, it has been brought to our attention that companies doing business by mail from neighboring states with Pennsylvania residents and attempting to collect on alleged debts have no difficulty in bringing suit and obtaining judgments in such neighboring states. Where the employer of the debtor maintains an office in the foreign jurisdiction as well as in Pennsylvania, the creditors have attempted to enforce such judgments by serving the employer with a foreign garnishment notice. In many instances, we are informed, employers, in compliance with such notice, then proceed to withhold such wages at and through the Pennsylvania location.

You are informed that such garnishment of wages is unlawful, because it is in violation of §5 of the Act of April 15, 1845, P.L. 459 (42 P.S. §886), and the Act of May 23, 1887, P.L. 164, as amended (12 P.S. §§2175, 2176). You are further informed that foreign wage attachments are not entitled to full faith and credit, although, of course, the underlying judgments are. Accordingly, an employer need not and should not comply with foreign wage attachment notices and should, in all cases, refuse to withold wages of debtor-employes.

The Acts cited above provide as follows:

"§886. Entry of judgment on admission of assets

"If the garnishee in his answers admit that there is in his possession or control property of the defendant liable under said act to attachment, then said magistrate may enter judgment specially, to be levied out of the effects in the hands of the garnishee, or so much of the same as may be necessary to pay the debt and costs: *Provided however, That the wages of any laborers, or the salary of any person in public or private employment, shall not be liable to attachment in the hands of the employer.*" (Emphasis added.) 42 P.S. §886.

"§2175. Actions or assignments to defeat exemptions, forbidden; liability

"From and after the passage of this act, it shall be unlawful for any person or persons, being a citizen or citizens of this Commonwealth, *to institute an action* on, or to assign or transfer any claim for debt *against a resident of this Commonwealth for the purpose of having the same collected by proceedings in attachment in courts outside of this Commonwealth,* or to send out of this Commonwealth by assignment, transfer or other manner whatsoever, either for or without value, any claim for debt against any resident thereof, for the purpose or with the intent to deprive such persons of the right to have his personal earnings or property exempt from application to the payment of his debts according to the laws of this Commonwealth, where the creditor and debtor and the person or corporation owing the money intended to be reached by such proceedings are within the juisdiction of the courts of this Commonwealth; and the person or persons so suing upon, assigning or transferring any such claim, for the purpose or with the intent aforesaid, shall be liable in an action of debt to the person or persons from whom any such claim shall have been collected by attachment or otherwise outside of the courts of this Commonwealth for the full amount of debt, interest and costs so collected, and the defendant or defendants therein shall not be entitled to the benefit of the exemption laws of this Commonwealth upon any execution process issued upon any judgment recovered in any such action." (Emphasis added.) 12 P.S. §2175.

The courts of the Commonwealth have, over the years, consistently held that a strong public policy exists against the garnishment of wages in favor of preferential treatment of wage earners. See, e.g., the following cases cited in *Guty v. U.S. Steel Corp.* (C.P. Fayette Cty. No. 2650 in Equity); *Kolber v. "The Cyrkle"*, 433 Pa. 247 (1969); *Resolute Insurance Co., Inc v. Pennington*, 423 Pa. 472, 478 (1966); *Eastern Lithographing Corp.*

v. Silk, 203 Pa. Super. 21 (1964); *Right Lumber Co. v. Kretchmer*, 200 Pa. Super. 335 (1963); *Bell v. Roberts*, 150 Pa. Super. 469 (1942); *Wagner-Taylor Co. v. McDowell*, 137 Pa. Super. 425 (1939); *Pasos v. Ferber*, 263 F. Supp. 877 (M.D. Pa. 1967).

Further, the courts have not looked favorably on any attempts —direct or indirect—to evade the clear purpose of the statutes quoted above and have not hesitated to invoke equitable jurisdiction to prevent such evasion. See, e.g., *Zeiders v. Lewis Apparel Stores, Inc.*, 82 D. & C. 488 (C.P. Blair Cty. 1952) where the court stated the following:

> "The purpose of the Act of 1887 was to prevent evasions of the Act of 1845, which provided that wages shall not be liable to attachment in the hands of the employer. Its dominating purpose was 'to afford additional security to the exemption previously granted': *Steel v. McKerrihan*, 172 Pa. 280, 283 (1896). This act provided a right of action at law where payment of wages was made in judicial proceedings in a foreign jurisdiction under the circumstances set forth in the act. The act did not destroy the equity jurisdiction in Pennsylvania to enjoin further proceedings before payment, in violation of the 1845 Act. In *Galbraith v. Rutter*, 20 Pa. Superior Ct. 554, the court said concerning the Act of 1887, as follows:
>
> "The dominating purpose of this legislation (which has been held to be constitutional, *Sweeny v. Hunter*, *supra*) is to prevent evasions of the Act of 1845 declaring that wages of any laborer shall not be liable to attachment in the hands of the employer: *Steel v. McKerrihan*, 172 Pa. 283. It is argued that the remedy furnished by the Act of 1887 is exclusive of all other proceedings which theretofore might have been brought by a debtor against a creditor for conduct covered by the Act. It is true, and it is conceded, that in the absence of the Act, the right to proceed in equity in personam, would obtain, but it is asserted that the existence of the Act denudes the plantiff of his right to equitable procedure. The effect of the Act is to create a right to an action at law in the case of payment actually made in judicial proceedings in a foreign jurisdiction. It does not express intention to destroy the equity jurisdiction in Pennsylvania by which restraint may intervene before payment. Therefore, this legislation does not furnish an exclusive procedure preventing the filing of a bill to enjoin conduct stamped by legislation as unlawful, and which has not reached consummation in actual payment. . . ."

See also, e.g., *Gaty v. U.S. Steel Corp.*, *supra*; "Extra State Evasion of the Exemption of Wages," 1970 Pa. Bar Assoc. Quart. 173.

Two (2) questions, therefore, arise:

1. Is an Order of a foreign court requiring a Pennsylvania employer to withold wages of a Pennsylvania employe in satisfaction of a debt owed by that employe, entitled to full faith and credit in a Pennsylvania court?

2. Is employer subject to contempt if he refuses to obey?

The "Full Faith and Credit" Clause of the United States Constitution provides:

> Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. . . ." Art. IV, §1.

It must be stated, first of all, that the question we now address ourselves to is one that can be resolved with finality only by the United States Supreme Court. That court has frequently stressed the importance of the Full Faith and Credit Clause in our Federal system, see, e.g., *Milwaukee County v. M.E. White Co.*, 269 U.S. 268, 276-7 (1935) (quoted in Restatement (2d) of Conflict of Laws 2d, comment to §103):

> "The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." (Stone, J.)

Thus, for example, a valid judgment rendered in a State of the United States must be recognized and enforced in another state even though the original claim could not have been maintained in that state because that claim was contrary to its strong public policy. Restatement of Conflict of Laws 2d, §117 and cases and examples cited therein.

Nevertheless, we feel compelled to express our opinion that the policy expressed above does not apply to the instant situation. The question involved here is not whether Pennsylvania will recognize a valid money judgment of a sister state (which it clearly must under the Constitution); the question is whether a foreign jurisdiction may impose its collection mechanism on a Pennsylvania debtor where the debt was incurred in Pennsylvania by a Pennsylvania citizen to a corporation doing business in Pennsylvania.

In this regard, we must consider the following:

(1) The attempt to evade our wage garnishment exemption is a violation of the civil and criminal law of the Commonwealth. 12 P.S. §2175 (cited above); *Commonwealth v. Stambaugh*, 22 Pa. Super. 386 (1903).

(2) The evasion may be enjoined (see *Galbraith v. Rutter*, 20 Pa. Super. 554 (1902)), and that injunction is both lawful, *Cole v. Cunningham*, 133 U.S. 107 (1890), and entitled to full faith and credit. "Unconstitutional Discrimination in the Conflict of Laws: Equal Protection," 28 U. Chi. L. Rev. 1, 28 (1960).

(3) No foreign jurisdiction should ever issue a wage garnishment order in the situation described above under relevant rules of conflict of law. Restatement (2d) of Conflict of Laws 2d §132 provides:

> "The local law of the forum determines what property of a debtor within the state is exempt from execution unless, another state, by reason of such circumstances as the domicile of the creditor and debtor, within its territory, has the dominant interest in the question of exemption. In that event, the local law of the other state will be applied."

Given these circumstances, we do not believe that the Full Faith and Credit Clause applies to wage garnishment orders of a foreign jurisdiction and believe such orders to be unenforceable. It follows, of course, that employers should, and can with probable impunity, refuse to comply with foreign garnishment notices.[1]

Sincerely yours,
MARK P. WIDOFF
Deputy Attorney General
ISRAEL PACKEL
Attorney General

OFFICIAL OPINION No. 68

1973

Statutory Construction Act—Two or more amendments to the same provision, one overlooking the other (1 Pa. S. §1955)—Public School Code of 1949 (24 P.S. §5-516.1)—Tax Reform Code of 1971 (72 P.S. §7401(3)(1))—Act of January 18, 1966, P.L. (1965) 1292 (No. 515) 16 P.S. §11948)

1. Section 1955 of the Statutory Construction Act construed
2. Amendments to §516.1 of the Public School Code made by Acts 302 and 312 of 1972 must be given effect; inserts and strike-outs of both amendatory acts must be read into the basic statute.

1. In the case of *Chicago R.I. & Pac. Ry. v. Sturm*, 174 U.S. 710 (1899) the Court refused to allow an employe (resident of a state not allowing wage garnishment) to recover his wages from an employer who was forced in an extrastate garnishment proceeding to pay a judgment of a creditor against the employe. To have done so, would have been to subject the employer to double liability—an intolerable result. While the decision in *Sturm* was necessary to maintain the integrity of our Federal system, we respectfully submit that an employer who refuses to garnish wages in the situation we have described above should suffer no penalty in the forum state for such refusal. His refusal, of course, would be one way to raise the underlying issue squarely before the courts.

3. Amendments to §401(3)(1) of the Tax Reform Code of 1971 made by Acts 93 and 105 of 1971 must be given effect; inserts and strike-outs of both amendatory acts must be read into the basic statute.
4. Amendments to the act of January 13, 1966, P.L. (1965) 1292 (No. 515) made by Acts 254 and 352 of 1972 must be given effect; inserts and strike-outs of both amendatory acts must be read into the basic statute.

Harrisburg, Pa.
October 10, 1973

Honorable John C. Pittenger
Secretary
Department of Education
Harrisburg, Pennsylvania
and
Honorable Robert P. Kane
Secretary
Department of Revenue
Harrisburg, Pennsylvania
and
Honorable James A. McHale
Secretary
Department of Agriculture
Harrisburg, Pennsylvania

Gentlemen:

In recent weeks, you have, by seperate requests, asked the Department of Justice to render its formal legal opinion concerning the interpretation of certain statutes. In each case, the interpretation requires the reading of two amendments to the same section of a single statute; neither amendatory act, though passed in the same session of the General Assembly, makes reference to the other. In view of the similarity of the requests, the similarity of the nature of our legal advice, and the similarity of the legal analysis involved, I am taking the liberty of addressing this formal opinion to you jointly, in the belief that a uniform approach to the issues involved will be beneficial in this instance as well as be a guide to future interpretations of statutes.

I. *The Statutes in Question*

a. Concerning the Department of Education:

Act of December 6, 1972, P.L._____ (No. 302); 24 P.S. §5-516.1 and act of December 6, 1972, P.L._____ (No. 312); 24 P.S. §5-516.1, amend. section 516.1 of the Public School Code of 1949, act of March 10, 1949, P.L. 30; 24 P.S. §5-516.1.

b. Concerning the Department of Revenue:

Act of August 31, 1971, P.L. 362 (No. 93); 72 P.S. §7401(3)(1) and act of September 9, 1971, P.L. 437 (No. 105); 72 P.S. §7401(3)(1), amend section 401(3)(1) of the Tax Reform Code of 1971, act of March 4, 1971, P.L. 6 (No. 2); 72 P.S. §7401(3)(1).