

Opinion No. 16-1762

March 18, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. George L. Brooks, Albuquerque, N. M.

Garnishee proceedings against a state institution.

OPINION

{*333} I have received your letter of yesterday enclosing copy of interrogatories and copy of a writ of garnishment, which I assume has been served on the Board of Regents in a case against one of your employes, as to which you ask me if you are compelled to appear in court and make answer. I notice that the time fixed for your appearance in the writ has long since passed and I assume that that particular case must have been settled in some way but that you desire some expression of opinion from me as a guide for the future.

The former law on this subject was that no public officer could be summoned as a garnishee in his official capacity unless the debt were incurred for the necessities of life, the defendant being the head of a family and the wages earned by him not exceeding \$ 50 per month. This you will find in Section 2546 of the Codification. This section, however, has been amended by Chapter 26 of the Laws of 1915 so that on this subject it is provided that no public officer shall be summoned as a garnishee in his official capacity except in cases where the plaintiff has a judgment against the defendant in some court of this state. There have been some doubts expressed as to the validity of this legislation on the ground that, at least as far as state officers are concerned, it authorizes an interference with the executive department of the government by proceedings in the judicial department. I have not reached any definite conclusion as to that objection, but my inclination is to think that there is not much in it. The important thing in this, however, is that before any such garnishment can be served and enforced against any public officer, the plaintiff must have first obtained a judgment against the defendant. As far as I can judge from the papers which you sent, in that particular case there is nothing to indicate that the plaintiff had obtained a judgment against the defendant before attempting to serve this garnishment, and by Section 2522 of the Codification, where the plaintiff has such a judgment, he must file an {*334} original action setting forth his claim against the defendant as in ordinary suits and cannot have a writ of garnishment issued in the original suit for debt. These objections to the regularity of the proceedings ought to be presented by the Board of Regents before answering any interrogatories.

You ask particularly about the propriety of answering the third interrogatory, which is as to whether defendant is in your employ and if so, how and when he is compensated for his services? It is my opinion that there is nothing in the garnishment statute which

authorizes such an interrogatory and objection to answering it ought to be presented to the court upon that ground.

I return herewith copies of the interrogatories and of the writ.