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ARIZONA ATTORNEY GENERAL

May 23, 1986

Ms. Alma Jennings Haught  
Clerk of the Superior Court  
P.O. Box 899  
Florence, Arizona 85232

Re: I86-055 (R85-154)

Dear Ms. Haught:

You have asked if fees collected by your office for issuing wage assignments should be considered as income to the state child support program, for the purpose of computing your grant under the program. We conclude that it is appropriate to count such fees as program income for this purpose.

Pursuant to a contract under Title IV-D of the Social Security Act ("IV-D") the state pays the county for providing specific child support services, including wage assignments. The county's grant is based on a percentage of the actual costs of providing IV-D services. Program income is deducted from the costs used to compute the grant, pursuant to 45 C.F.R. § 74.42 (c). The regulations defining program income are as follows:

§74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period,

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proceeds from sale of tangible personal or  
real property, usage or rental fees, and  
patent or copyright royalties . . . .

. . . .

(c) The following shall not be  
considered program income:

(1) Revenues raised by a government  
recipient under its governing powers, such as  
taxes, special assessments, levies, and  
fines. (However, the receipt and expenditure  
of such revenues shall be recorded as a part  
of grant or subgrant project transactions when  
such revenues are specifically ear-marked for  
the project in accordance with the terms of  
the grant or subgrant.)

45 C.F.R. § 74.41 (1984) (emphasis added).

The question is whether wage assignment fees, which  
are "fees for services," also qualify as "revenues raised"  
which are exempt from program income. State law draws a clear  
distinction between the power to set fees and the power to  
raise revenues by taxing. In Stewart v. Verde River Irrigation  
and Power District, 49 Ariz. 531, 544-545, 68 P.2d 329, 334-335  
(1937), the Arizona Supreme Court stated:

The word "fee" is defined to be, "a charge  
fixed by law for the service of a public  
officer," while a "tax" is "a forced  
contribution of wealth to meet the public  
needs of the government." Webster's New  
International Dictionary. The distinction  
between the two is very plain. A tax is  
imposed upon the party paying it by mandate of  
the public authorities without his being  
consulted in regard to its necessity, or  
having any option as to its payment. The  
amount is not determined by any reference to  
the service which he receives from the  
government, but by his ability to pay, based  
on property or income. On the other hand, a  
fee is always voluntary, in the sense that the

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party who pays it originally has, of his own volition, asked a public officer to perform certain services for him, which presumably bestow upon him a benefit not shared by other members of society.

To determine whether a fee statute is a fee or a tax, the Stewart case raises two questions, as summarized in a 1973 Attorney General opinion:

1. Is the fee based upon the theory of paying the reasonable expenses to the state of furnishing the service, or is it fixed for the purpose of returning a surplus revenue to the state?
2. If the former be true, is the scale of payment in reasonable proportion to the services rendered?

Ariz. Atty. Gen. Op. 73-25-L. In other words, a fee may be fixed either for services or as a tax. A fee for a service must be reasonably related to the cost of the service, while the amount of a tax cannot be tied to a service. The two categories are mutually exclusive.

A.R.S. § 12-284 ties specific fees to specific services. This section lists fees for filing copies, certificates, licenses and other services provided by the clerk of the court. The fees range from twenty five cents for photocopies of documents to twelve dollars for issuance and return of marriage licenses. This section also requires the clerk to charge six dollars for each "writ," which includes wage assignments. Because the wage assignment fee is tied to a specific service, we conclude that it is based on the theory of paying a reasonable expense to the state for furnishing the service, and not for the purpose of generating additional surplus revenue to the state.

Inasmuch as a wage assignment fee is a fee for service rather than a tax, the fee is not exempt from IV-D program income. Our concluding that wage assignment fees are program income does not give rise to an unjust result. When an individual has already paid for a specific service, it is not unreasonable for the IV-D program to refuse to pay the expense

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of providing that service a second time. Therefore, we  
conclude that fees collected by your office for issuing wage  
assignments should be considered as program income for the  
purpose of computing a IV-D grant.

Sincerely,



BOB CORBIN  
Attorney General

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