#39.30 3/9/72

First Supplement to Memorandum 72-15

Subject: Study 39.30 - Attachment, Garnishment, Execution (Employees' Earnings Protection Law)

You have been sent a copy of Senate Bill 88 (as amended)(attached to Memorandum 72-15) and a copy of the revised Comments (pages 21-43 of Minutes of February 10-12, 1972, Meeting).

A number of additional matters concerning Senate Bill 88 have come to the staff's attention, and we present these for your consideration herewith.

Compromise With Representatives of Creditors

Amended Senate Bill 88, and the revised withholding table attached to Memorandum 72-15, has been reviewed by Mr. Dahl and Mr. Bessey. After a long discussion with them and the legislative representative of the creditor's association, they state that they would withdraw all objections to the bill if two amendments were made. The first amendment would be to reduce the $500 exemption for bank accounts provided in Section 690.7 to $100. The second amendment would be to revise the "hardship exemption" provision for bank accounts in Section 690.7-1/4 to delete the statement that "the exemption provided by Section 690.7 should be adequate except in rare and unusual cases" and to add a statement indicating that the hardship exemption for bank accounts should be given only where the debtor's current earnings or other current income is not adequate for the support of the debtor and his family.

The creditor's proposal is based on a theory that there should be a small amount easily exempt ($100) merely upon affidavits that the debtor does not have other accounts. Any further exemption should be based on a showing that the amount to be exempt is essential for the support of the

debtor or his family. Thus, in cases where the debtor is unemployed or off work because of illness or needs more than the $100 exemption given because his income is inadequate, he would obtain a hardship exemption. However, the debtor who does not need the hardship exemption would not be able to exempt more than $100. The $100 exemption which is easily obtained and which the creditor cannot defeat unless he can show perjury on the part of the debtor would provide the debtor with sufficient funds to live on pending determination of the hardship exemption.

The staff believes that the creditors have taken a constructive attitude toward our recommendation. They are willing to accept the revised withholding table (which provides substantial protection to low income debtors) and to provide an exemption for bank accounts for debtors who really need the exemption. In other words, the existing flat exemptions would be replaced by a flexible one based on a showing of need. This is not an unreasonable approach to the problem.

The staff recommends that the offer of the creditor's representatives be accepted as a reasonable compromise and that the following amendments be approved:

Page 8, line 12. Delete "five" and insert "one".

Page 8, line 13. Delete "($500)" and insert "($100)".

Page 8, lines 12 through 20. Revise to read:

(b) A deposit account owned by the debtor is exempt from execution in an amount essential for the support of the debtor or his family. ~~This standard recognizes that the exemption provided by Section 690.7 should be adequate except in rare and unusual cases.~~ An exemption shall be allowed under this section only to the extent that the earnings and other current income of the debtor and his spouse are inadequate for the support of the debtor and his family. Neither the judgment debtor's accustomed standard of living nor a standard of living "appropriate to his station in life" is the criterion for measuring the debtor's claim for exemption under this section.

If the above amendment is approved, the Comments to the bank account exemption sections will have to be revised accordingly.

Technical Amendments

There are three technical amendments that are necessary.

Page 10, line 35. The reference to Section "690.60" is a typographical error. The reference should be to Section "690.50."

Page 24, lines 6 and 7. The Department of Human Resources Development has called the following revision (necessary to reflect a change in terminology made by Chapter 873 of the Statutes of 1971) to our attention:

> Code or (ii) a notice ~~or order to withhold~~ of levy pursuant to Section 1755 of the Unemployment Insurance Code ~~,~~ or a notice or order to withhold pursuant to Section 6702, ...

This is a needed revision and should be made.

Other Matters

We asked the Judicial Council and the Department of Industrial Relations for comments on the substance of Senate Bill 88 and any needed amendments and also on the cost of the bill. Neither provided written comments in time for review prior to the meeting. The Judicial Council gave me a detailed oral report, summarized below, and will have a representative at the meeting. The Department of Industrial Relations provided Senator Song with an oral estimate of the cost of the bill.

Cost. The Department of Industrial Relations estimates the cost of administration of its responsibilities under the bill at $60,000 for the first year ($45,000 for staff and $15,000 for printing) and at $15,000 for subsequent years.

Administration of bill. The Judicial Council notes that there is some overlap in duties under the bill. For example, the Judicial Council determines the form and content of the Withholding Order which tells the employer what to do to comply with the order, but the Department of Industrial Relations determines the content of the Informational Pamphlet that contains the more detailed instructions on what the employer is required to do. Since we have eliminated all administrative enforcement of the statute and rely on court enforcement of its orders by contempt or other appropriate order, the staff believes that serious consideration should be given to giving the Judicial Council authority to administer all provisions of the statute. This should result in significant savings of administrative costs (since only one agency will need to become expert on the statute) and would provide one agency only which need be contacted concerning the statute. We would, however, only recommend that this change be made if the Judicial Council would be willing to accept the administration of the statute.

Operative date. The operative date of the bill is delayed until July 1, 1973. If the bill is passed by July 1, this would give about one year for the necessary procedures and forms to be developed by the Judicial Council. However, the Judicial Council is concerned that the bill will not be passed until a later date. The Judicial Council meets in November and in May. If the matter cannot be disposed of at the November 1972 meeting, it would not be possible for the county clerks to get the necessary form printed by July 1, 1973, because of the bid requirement for public printing. The Council suggests January 1, 1974, as an operative date.

Transitional provisions. One problem created by the enactment of the continuing levy procedure by the 1971 Legislature is that of how a levy made just prior to the operative date of the new statute is to be treated. Is withholding pursuant to the continuing levy of execution on earnings to cease on the operative date of the new statute even though the 90-day period for withholding has not ended? Or is the continuing levy of execution to continue until the withholding period under the writ expires?

Public officers and employees. Section 723.011(b) defines "employee" to mean "an individual who performs services subject to the control of an employer as to both what shall be done and how it shall be done." The question has been asked: Is it clear that this definition includes a member of the Legislature, a member of the board of county supervisors, an elected official, and the like? Also, subdivision (g) of Section 710 (page 19 of bill) probably should be revised to substitute "public officer or employee" for "public employer" in two places. Compare subdivision (f) of the same section, which refers to a "public officer or employee."

Section 723.026. In view of the revisions in the withholding table and provisions dealing with when the employer must send withheld earnings to the creditor, it would seem that the 35-day period in Section 723.026 might reasonably be shortened, perhaps to 10 days.

Mailing ORIGINAL order to employer. The Judicial Council notes that the original order made in a civil action is filed with the court and a COPY is served on the opposing party. What justification, if any, is there for departing from this general rule here?

Section 723.101. Should the second sentence of subdivision (a) have an introductory clause: "Except as otherwise provided in Sections 723.022 and 723.023,"?

Section 723.102. The Judicial Council raises the question whether the application for an order should be accompanied by an affidavit that the judgment creditor has mailed the papers required by Section 723.103 to the judgment debtor. This would not require that such papers be served but would provide some assurance that they were actually mailed and the affidavit could be included as a part of the application form.

Serve, mail, notify, send, provide. Various sections of the statute require that something be served, others that something be mailed, or that someone be notified, or that something be sent or provided. The Judicial Council asks whether the particular word used in such sections was carefully selected or whether different words were used to express the same intent. For example, Section 723.026 requires that the creditor "send" a receipt "by first-class mail." Section 723.027 requires that the creditor "send" a certified copy to the employer. Section 723.103 provides that the creditor shall "mail" certain documents to the debtor when he applies for an earnings withholding order. Section 723.105 requires that the court clerk "notify" the

debtor and creditor of the time and place of hearing and include with the notice a copy of the application for the hearing and the financial statement. The same section requires that the clerk "send" a copy of a modified earnings withholding order to the employer or "notify" the employer in writing that the order has been terminated. Section 723.106 provides for "service" on the debtor of a request for hearing, for the court clerk to "notify" the parties of the time for hearing, and for the clerk to "send" a copy of a modified order to the employer. Section 723.108 requires the employer to complete and "mail" his return to the creditor. We believe that we have used the word "service" when we mean service and have used a variety of other words when we do not mean service. In some cases, we require something to be mailed (or a copy sent) and in others we require that the parties be "notified" of the time and place of a hearing (which could be by mail or by telephone). Perhaps the word "first-class mail" should be inserted in all cases where it is desired to limit something to delivery by mail. However, on reviewing the various provisions, we do not believe they create any particular problem. If a problem arises, the Judicial Council could adopt a rule to deal with the matter.

Duties of clerk under Sections 723.105 and 723.106. We impose duties on the court clerk to notify parties of hearings and to send out modified orders or to notify that an order is terminated. In part, we did this because we contemplate that some decisions will be made on the basis of the financial statement and that there will be no oral hearing on the claim for a hardship exemption. Also, we thought the revised order should come from the clerk rather than one of the parties, as where the debtor obtains a reduction in the amount withheld. The Judicial Council questions whether the parties should not set the time for hearing and serve any orders.

Section 723.107(d). The Judicial Council suggests that the word "ineffective" be substituted for "void" in subdivision (d) of Section 723.107. We think this is a desirable change and that the provision should be conformed to Section 723.023(a)(3) by revising it to read:

> (d) An earnings withholding order served upon the employer more than 45 days after its date of issuance is ~~void~~ ineffective and the employer shall not withhold earnings pursuant to such order .

The term "void" introduces concepts that might create problems, according to the Judicial Council. If this change is made, the words "or void" will need to be deleted from Section 723.108.

Section 723.120. The Judicial Council suggests that information required to be included in a form may prove unnecessary or that other information may prove to be a desirable substitute for information specified in the statute. Accordingly, they suggest the substance of the following revision of the second sentence of Section 723.020:

> Such forms shall require the information prescribed by this chapter and such additional information as the Judicial Council requires except that the Judicial Council may omit from any such form information prescribed by this chapter if it determines that the information is not necessary for the administration of this chapter .

This amendment would avoid the need to amend the statute if administrative improvements can be made by revision of forms.

Section 723.122. The Judicial Council points out that the county clerks may object to having to have on hand forms needed to claim an exemption when the order is issued by another court. It is suggested that each court clerk have the forms needed to claim the exemption if the order is issued from his court.

Section 723.153. This section should be revised to state:

> Any earnings withholding order or any order of the court made pursuant to this chapter may be enforced by the court by contempt or other appropriate order.

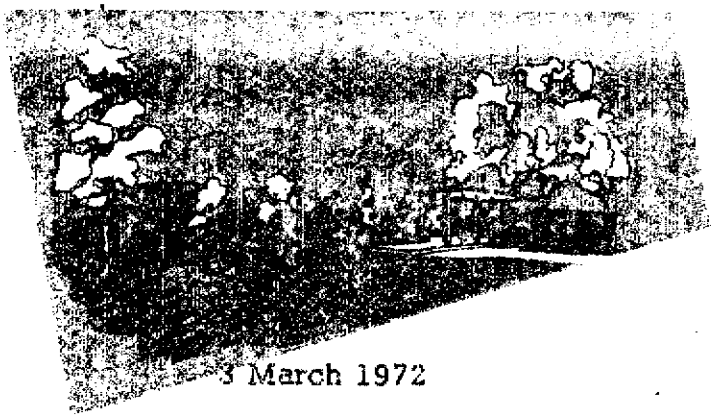
The Judicial Council raises the question whether "order" includes an earnings withholding order. The intent was that such orders be enforced by contempt citations.

Section 723.150. The use of the word "required" in the introductory clause of Section 723.150 is not sufficient to pick up provisions, like the rule making authority, which authorize but do not require the Judicial Council to do something. We suggest the section be deleted as unnecessary.

Credit union exemption. Attached as Exhibit I is a letter from the California Credit Union League objecting to the repeal of Section 15406 of the Financial Code. This section provides for a $1,500 exemption of credit union shares. Senate Bill 88 would replace this with a more flexible exemption, based primarily upon a showing of need of the money for the support of the debtor or his family.

Respectfully submitted,

John H. DeMoully
Executive Secretary



CALIFORNIA CREDIT UNION LEAGUE
2322 SO. GAREY AVE. • POMONA, CALIF. 91766 • 714/628-6044

REPLY TO:
Governmental Affairs Office
455 Capitol Mall, Suite 205
Sacramento, California 95814
916/443-7935

3 March 1972

Mr. John DeMoully, Executive Secretary
California Law Revision Commission
School of Law, Stanford University
Stanford, CA. 94305

Re: SB 88

Mr. DeMoully, our trade association which serves 626 state-licensed credit unions in California, is much concerned with a provision in SB 88 because it repeals Section 15406 of the Financial Code, a part of the California Credit Union Law. The section provides for exemption up to $1,500 of credit union shares on attachment or execution. That feature has been in the code since the law was written in 1927. In 1969 when Assemblyman Beverly and Brathwaite introduced legislation to revise the exemption statutes, we were successful in persuading the authors to leave Section 15406 undisturbed. We went the same route in 1970 when a similar proposal was introduced, this time by Assemblymen Jim Hayes and Yvonne Brathwaite.

We do not argue, Mr. DeMoully, that a creditor should be denied the right to attach assets of a defaulting debtor. Our only argument is the unique insurance arrangement peculiar to credit unions. For almost 40 years our organizations, which primarily serve persons of moderate means, have provided life insurance coverage on credit union accounts up to $2,000 and it costs the member nothing directly. Here is how it works. A member deposits funds in his savings account and, if he is able to follow his normal pursuits in making a living, those savings have matching dollar-for-dollar insurance coverage up to $2,000. The premiums are paid out of the organization's earnings. For example, a credit union member who has $1,000 perhaps in his account becomes permanently and totally disabled or dies. His widow or other beneficiary immediately becomes the owner of the account plus a matching amount from the insurance carrier. Incidentally, in all fairness, I must point out here that not all credit unions provide the coverage. The vast majority do, however. My personal experience over the years is the basis for my contention that in many, many instances a member's credit union savings account constitutes the major portion, if not all, his insurance program. I have seen many a hardship averted because of the ready availability of credit union savings accounts and the insurance proceeds when they were needed most.

Through you, Mr. DeMoully, I strongly urge the Commission to take another look at SB 88 and amend the bill to leave Financial Code Section 15406 as it is. The author, Senator Song, is in sympathy with us but describes himself as "your agent" as far as this legislation is concerned. Any decision to amend must come from the Commission.

May we hear from you at your earliest convenience.

Respectfully,

Jack

Jack Reidy, Director
Governmental Affairs

March 8, 1972

Honorable Alfred Song
Senate Chamber
State Capitol
Sacramento, California 95814

Dear Al:

This letter is in reply to your request for our comments on your Senate Bill 88, as amended in the Senate February 29, 1972. Rather than repeat from it at length, I enclose for your information a copy of a preliminary staff memorandum concerning this measure. You will note that several of the matters mentioned are cause for real concern. For example, the bifurcated responsibility for administration, with the necessity for forms reflecting the statutory law as well as regulations from two different administering authorities, appears to us to give rise to a host of communication problems. We also have informally discussed other minor matters with Mr. John DeMoully, Executive Secretary of the California Law Revision Commission. I want to emphasize, however, that this represents a staff analysis only. Although the Judicial Council has not had the opportunity to consider this matter, we plan to bring it to the attention of the Executive Committee at its meeting later this week. After that I hope we will have the opportunity to meet with you and Mr. DeMoully in an attempt to resolve some of the issues presented.

Thank you for giving us the opportunity of commenting on this proposal. We hope that we will be able to resolve our differences to our mutual satisfaction in an attempt to improve the California law relating to attachment, garnishment and execution.

Very truly yours,
Ralph N. Kleps, Director

By
Jon D. Smock
Attorney

JDS/r
Enclosure
cc: John H. DeMoully, Exec. Secy.
California Law Revision Commission
Stanford Law School

EVELLE J. YOUNGER
ATTORNEY GENERAL

EXHIBIT III

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, LOS ANGELES 90012

March 7, 1972

John DeMoully, Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

The taxing agencies of the State have reviewed S.B. 88 and feel that several changes will be necessary before they can be satisfied with the proposed law. I will set forth the sections which need changes, together with proposed language for the section where I feel it is necessary or desired.

1. Code of Civil Procedure section 690.7(g).

The Department of Human Resources Development collects debts in the form of benefit overpayments. While the Department agrees that these liabilities are within the general earnings withhold and are not encompassed by a tax withhold, it requests that the following language be added to this section - "state tax liability as defined, etc. or amounts due to the Department of Human Resources Development under Unemployment Insurance Code sections 1375-1380, 2735-2741, 3751."

2. Code of Civil Procedure section 710(f).

This subsection has been recently amended and does not read as it appears in the proposed bill. The language which now appears must be retained.

3. Code of Civil Procedure section 723.011.

The definition of "earnings" should be expanded to include "prepaid compensation, advances, and draw account payments." We believe that the use of "otherwise" in the statute is too vague as to include these forms of payment. However, the "otherwise" should remain in the statute.

4. Code of Civil Procedure section 723.020.

It is not clear whether this section means that the tax withhold is a judicial procedure. It is not, strictly speaking, a judicial procedure. It may be necessary to add clarifying language to include tax withhold orders.

5. Code of Civil Procedure section 723.022(d).

The five day waiting period before the orders become effective leaves a loophole for the casual or itinerant worker, who works for a short period of time, and frequently changes employers. We believe that this loophole should be closed by an amendment which reads: ". . . in cases where an employee works for any employer for a period of 10 days or less, the order is effective when received."

6. Code of Civil Procedure section 723.026.

The requirement that a receipt be mailed to the judgment debtor after receipt of each payment is quite burdensome to the state. The state, of course, is the largest single creditor and many payments will be received under the new legislation. The Franchise Tax Board estimates that over 150,000 receipts would have to be issued in a single year under the provision as it now reads. The State Board of Equalization in the period of a year, using a similar procedure issued 1,500 warrants. The payments on 1,500 tax withholds (under the proposed procedure) would be numerous and would stretch out over a considerable period of time. Therefore, the taxing agencies request that they be empowered to send by mail statements of payments to the taxpayer on a quarterly basis. This should be set forth in section 723.031. (See suggested amendment in paragraph 8.)

7. Code of Civil Procedure section 723.027.

The state on a tax withhold cannot file a satisfaction of judgment with a court. It cannot send a certified copy of the same to the employer.

Some arrangement should be made by which the agency can provide a similar document, such as a release of lien, where applicable.

8. Code of Civil Procedure section 723.031.

In section (a)(2), Revenue and Taxation Code section 18807 should now read section 18817.

(d) The agencies are unwilling to accept the language of this section as it currently reads. It will have to be amended before the agencies can approve it. It is suggested that the section be redrafted to read as follows:

"A withholding order for taxes may only be issued (1) where the existence of the state tax liability appears on the face of the taxpayer's returns, or (2) the liability has been determined or assessed, as provided in the Revenue and Taxation Code and Unemployment Insurance Code, and the taxpayer had notice of the proposed assessment or determination, and had available an opportunity to have the proposed assessment or determination reviewed by appropriate administrative procedures, whether or not the taxpayer took advantage of said opportunity, or (3) where the withholding order for taxes on its face provides the taxpayer with notice and affords an opportunity for an administrative hearing for redetermination of the liability. No review of the taxpayer's liability shall be permitted in any court proceedings under this section."

The section as drafted has several significant defects. The word "proceeding" really should not be used. A determination or assessment can be made without a "proceeding." The word "proceeding" seems to contemplate a formal procedure whereby the agency makes a calculation of a liability after the production of evidence. The Revenue and Taxation Code makes it clear this is not the case. The taxpayer is offered the hearing after a determination has been made. If he chooses to avail himself of the procedure, he is entitled to full administrative review. The liability becomes final 30 days after the liability has been redetermined. If the taxpayer does not elect to pursue his administrative remedies, the determination becomes final 30 days after its issuance. Strictly speaking there is no "proceeding." Therefore, this section should adopt the language referring to the procedures contained in the Revenue and Taxation Code or the Unemployment Insurance Code, and not refer to "proceeding."

We have added "assessment" to the section because part of the Revenue and Taxation Code refers to "assessments" as well as "determinations."

We have also added language covering a very important and substantial area of state tax collection. The Franchise Tax Board can issue provisional assessments which do not provide for hearings. However, on collection, the taxpayer

is notified that he has an opportunity for a hearing. Therefore, when there is an outstanding tax liability, the notice and opportunity to be heard can be given concurrently with the service of the tax withhold orders. Procedures of this sort have been sanctioned. Randall v. Franchise Tax Board, No. 25,735, Ninth Circuit Court of Appeals, December 21, 1971; Horack v. Franchise Tax Board, 18 Cal. App. 3d 363, hearing denied by Supreme Court (1971). This area involves some $50,000,000 in state tax revenues. The Franchise Tax Board cannot consider approval without this vital provision.

(e) The section should be changed to read "Except as otherwise provided in this section, the provisions of this chapter shall govern the procedures and proceedings concerning tax withhold orders."

(f)(1) This section should be changed by adopting the following wording:

"The state may itself issue a withholding order for taxes to collect a state tax liability. The amount required to be withheld pursuant to an order under this paragraph shall be specified in the order. The amount to be withheld by the employer shall be no more than two times the maximum amount that is to be withheld under section 723.050. At the time of issuance, the state shall serve upon the taxpayer (i) a copy of the order and (ii) a notice informing the taxpayer of the effect of the order and his right to review and modification of such order. The taxpayer may apply in the manner provided in section 723.105 to a court of record in his county of residence for a hearing to claim the exemption provided by section 723.051 after the taxpayer has sought a hearing with the agency issuing the tax withhold order as provided in paragraph (2) of this section. No fee shall be charged for filing such application. After hearing, the court may modify the withholding order for taxes previously issued, but in no event shall the amount required to be withheld be less than that permitted to be withheld under section 723.050."

The agencies would like to have the first opportunity of modifying the orders. They have already handled such requests and are well-equipped to do so. This would save much court time and afford both taxpayer and agency an easy solution to handling payments. (See comment to (f)(2).)

The agencies are concerned with the language which requires them to set forth the amount the employer is to withhold. Does this mean exact dollars and cents? This would seem to require the agencies to determine how much a person's paycheck is, and make the appropriate calculation before the tax withhold can be issued. This could not be the intent of the commission - it would put a great and expensive burden upon the agencies to make this preliminary determination. A clarification in this language is requested.

We propose adding several paragraphs to subsection (f). These are:

(f)(2) It is recommended that this paragraph read:

"The state may provide for an administrative hearing to reconsider or modify the amount to be withheld pursuant to the withholding order for taxes at any time after service of such order. If the taxpayer requests a hearing under this paragraph the hearing must be provided within 15 days after the request is received."

This hearing is not the same hearing as contemplated in part (3) of subsection (d). The purpose is not to review the tax liability but to modify the amount withheld. Subsection (d) authorizes the institution of administrative procedures to redetermine the tax liability.

This addition gives the agencies the power to reduce the amounts of the tax withhold orders, saving both taxpayer, agency and court system from the problems and expenses inherent in filing suit. The hearing will be mandatory upon appropriate request. In the event the taxpayer is not satisfied, he may then proceed to court as provided in (f)(1).

(f)(3) The agencies believe that the mail provisions of the bill, as it applies to tax withholds, must be changed. Since the agencies will have to make countless thousands of mailings under the proposed procedure, a simplified, less expensive procedure is a necessity.

The following language is acceptable.

"Service of a withholding order for taxes and any other notices or documents required under this chapter in connection with such withholding order for taxes may be made by mail, first class postage prepaid. Service of a withholding order

for taxes is complete when it is received by the employer. Service or providing of any other notice or document required to be served or provided under this chapter is complete when the notice or document is deposited in the mail, first class postage prepaid to the last known address of the person to whom the notice or document is required to be given."

(f)(4) The numerous receipts which would have to be mailed upon each receipt of money from a taxpayer would cause great expense to the state. (See section 723.026 - comment.) Please consider the following language.

"The state may send quarterly notices of payments applied to the taxpayer's account in lieu of the receipt provided by section 723.026. Such notices shall be sent within the time specified in section 723.026 after the last day of the 3rd, 6th, 9th and 12th month of the year and the notice may contain other adjustments to taxpayer's account that were made during the quarter."

Section (f)(2) should now be denominated (f)(5). While the agencies understand what the commission has attempted to do, we feel the language is too vague and that the section as it reads still only sets a minimum below which a tax withhold may not go. The section is not explicit as to the state's right to obtain an amount in excess of 50% of a paycheck's nonexempt earnings.

The remaining subsections should be renumbered in accordance with the additions here proposed.

9. Code of Civil Procedure section 723.105.

Language should be added to bring this section into harmony with the additions to section .031, by adding "(a)(3) Where the judgment is for state tax liability, and the judgment debtor has requested a hearing from the respective agency as provided in section 723.031(f)(2)."

10. Code of Civil Procedure section 723.106.

Add, those categories added to section 723.011, that is "prepaid compensation, advances and draw account payments."

11. Code of Civil Procedure section 723.120.

Rather than require the Judicial Council to prescribe the forms, it is requested that the agencies be empowered to prepare forms and submit them to the Judicial Council for approval. It might read "Forms for tax withhold orders may be prepared by the agencies empowered to issue tax withhold orders and these forms must be submitted to the Judicial Council for its approval."

12. The same language as proposed for section 723.120 should be applicable to section 723.126.

13. Code of Civil Procedure section 723.127.

It is suggested that the "Employers Return" make provision for designating the election which the employer chooses as to the method of payment. (See section 723.025)

14. Code of Civil Procedure section 723.151(b).

Add "vacation trust funds," to the categories listed in this section.

15. Code of Civil Procedure section 723.153.

It is proposed that the section read "Any order of the court or tax withhold order made pursuant to this chapter may be enforced by contempt . . ." etc. This is to bring the tax withhold into the operation of this section whereby its language it does not do so.

16. Code of Civil Procedure section 723.155.

Enforcement provisions should be added to this section to give it teeth. Add, for example, "in the event the employer does so [i.e., defer or accelerate payment], he becomes liable for the amount which he would have been required to turn over to the judgment creditor." The employer may also be subjected to fine or misdemeanor penalties.

17. Code of Civil Procedure section 723.156.

Is this section exclusive? Can the agencies employ summary collection procedures as provided in the Revenue and Taxation Code or Unemployment Insurance Code.

18. Labor Code section 2929.

Subsection (a)(1) does not cover tax withholds. It

is presumed the commission intended to protect employees from tax withhold discharges as well as other garnishments.

19. Penal Code section 1208.

This section appears to be unclear.

We hope these suggestions will be considered favorably by the commission. We intend to appear on Friday, March 10, 1972, at the commission meeting to discuss this and explain any and all matters touched on by this letter.

Very truly yours,

MARK W. JORDAN
Deputy Attorney General

MWJ:rm
cc: James Philbin
R. D. Peters
L. S. Roberts
Carl DeVerter
R. O. Padilla
R. H. Bitzer
Jack Gillette