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OPINION COMMITTEE

The Honorable John Cornyn
Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

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FILE # ML-41678-00

I.D. # 41678

Re: Request for Attorney General Opinion

Dear General Cornyn:

As indicated below, I wish to request an Attorney General's Opinion regarding the constitutionality of the use of income withholding for ordered child support payments to withhold amounts for the payment of attorney fees, courts costs, and other fees.

In 1983, the Texas Constitution was amended to allow, as an exception to the prohibition of the garnishment of "current wages for personal services," the use of income withholding for the collection of "court-ordered child support payments." [Art. 16, Sec. 28] In 1985 and then in 1986 (in a 2nd Called Session), the 69th Texas Legislature enacted amendments to the Texas Family Code to enable the use of income withholding for the collection of ordered child support payments, including amounts of current support and any arrearages. [Texas Family Code, §§ 14.43, 14.61-71, eff. Sept. 1, 1985, and §§14.44-45, eff. Jan. 1, 1987.] In 1995, the 74th Texas Legislature recodified and amended the Family Code's income withholding provisions under a new Chapter 158, and subsequent legislatures have further expanded the statutory provisions for the use of income withholding in child support enforcement.

In 1999, the 76th Texas Legislature amended Section 158.103(3), Texas Family Code, to add "the amount of arrearages, accrued interest, and **ordered fees and costs**" to the required contents of an order or writ of withholding for child support. Moreover, the same Legislature amended Section 158.102, Texas Family Code, to specify that an order or writ of withholding continues in effect until - in addition to current support, arrearages, and interest - "**any applicable fees and costs, including ordered attorney's fees and court costs** have been paid." [Emphases added.]

The 76th Legislature also amended Section 157.167, Texas Family Code, to add a new subsection (c) to read:

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Chairman, Juvenile Justice and Family Issues
Civil Practices

(c) Fees and costs ordered under this section may be enforced by any means available for the enforcement of child support, including contempt.

The addition of this subsection to Section 157.167 codifies Texas case law to the extent that it identifies the use of contempt to compel payment of ordered attorney fees and costs arising from an action to enforce an unpaid child support obligation. The amendments to Section 158.103(3) and Section 158.102 (noted above) - as well as the addition of subsection 157.167(c) however, raise certain issues relating to garnishment of current wages for personal services "for the enforcement of court-ordered . . . child support payments," as authorized under Article 16, Section 28, of the Texas Constitution.

One such issue is how that constitutional provision may be construed with respect to the nature of "court-ordered child support payments." That is, are "any applicable fees and costs, including ordered attorney's fees and court costs," as the amended Section 158.102, Texas Family Code, provides - or, similarly, "ordered fees and costs," as the amended Section 158.103(3) provides - properly within the intended meaning of "court-ordered child support payments" for the purposes of the garnishment provision?

Some Texas courts order that attorney's fees and costs incurred in the enforcement of child support be collected through income withholding, along with the requisite payment on the obligation (i.e., current support and any arrears and interest on the arrears). Other courts, however, apparently order attorney's fees and costs incurred in the *establishment* of a child support obligation to be collected through income withholding. Furthermore, some courts in Texas are now including payment of county Domestic Relations Office fees and court registry fees as part of the "ordered fees and costs" specified in an order or writ of withholding for child support. Although that may appear permissible within the statutory language of Section 158.103(3), do such fees conform to the intention of the constitutional authorization of garnishment "for court-ordered child support." Do even "ordered attorney's fees and court costs" fall within the original intention of the constitutional provision? Or, in the alternative, if the constitutional language of "court-ordered child support payments" may be expanded to include "ordered attorney fees and court costs," may it be further expanded to include registry fees as among the "applicable fees and costs" authorized for inclusion in an order or writ of withholding as authorized under amended Section 158.103(3)?

A correlative issue arises from the amending language under new subsection 157.167(c) that ordered attorney fees and costs "may be enforced **by any means available for the enforcement of child support . . .**" [Emphasis added.] This inclusive language would appear to embrace not only income withholding, but all other enforcement remedies currently authorized under applicable state law, including license sanctions (under Chapter 232, Texas Family Code) and the use of child support liens (under Subchapter G, Chapter 157, Texas Family Code). The difficulty that specifically arises with the extension of these two remedies to the enforcement of ordered attorney fees and costs is that the current statutory provisions governing their use clearly speak of support "arrearages" - viz., amount of past-due child support, plus accrued interest.

The questions, then, which are presented and for which an Attorney General Opinion is requested, are these:

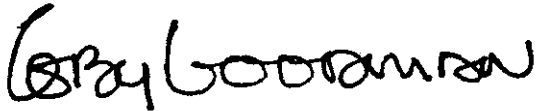
(1) May attorney's fees and costs arising from the **establishment** of a child support obligation be collected through income withholding, as such withholding is authorized under Article 16, Section 28, Texas Constitution?

(2) May ordered attorney fees and costs relating to the **enforcement** of a child support obligation be enforced "by any means available for the enforcement of child support," including income withholding, in accordance with Article 16, Section 28, Texas Constitution?

(3) May the constitutionally authorized garnishment of current wages for personal services for the enforcement of court-ordered child support payments be extended to include fees charged for the services of Domestic Relations Offices and court registries in the processing of child support cases?

I appreciate your guidance with respect to these issues.

Sincerely,

A handwritten signature in black ink that reads "Toby Goodman". The signature is written in a cursive, slightly slanted style.

Toby Goodman, Chair
Committee on Juvenile Justice and Family Issues