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MEMORANDUM

March 20, 2015

SUBJECT: Are the retirement benefits of public employees and labor union members exempt from debt collection?
(Work Order No 29-LS0769)

TO: Senator John Coghill
Attn: Rynniewa Moss

FROM: Daniel C. Wayne
Legislative Counsel

You have asked whether the retirement benefits of public employees and members of labor unions are exempt from garnishment. The short answer is yes, generally retirement benefits are protected from garnishment.

A garnishment is a method of debt collection. Exemptions from claims are set out in the Alaska Exemptions Act, AS 09.38. An exemption is defined in the Act as "protection from subjection to process or a proceeding to collect an unsecured debt."¹ Under the Act, AS 09.38.015(b) reads:

The right to benefits held by the state on behalf of an individual that may become payable by reason of disability, unemployment, or illness, amounts held in the teachers', judicial, or public employees' retirement system, or in the elected public officers' retirement system under former AS 39.37, and child support collections made by the child support services agency are exempt.

In addition, AS 09.38.017(a) exempts retirement benefits for all individuals, not just public employees or union members, it reads:

(a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's or beneficiary's creditor:

- (1) the interest of the individual or beneficiary in a retirement plan;
- (2) the money or other assets payable to the individual from a retirement plan;
- (3) the interest of a beneficiary in

¹ AS 09.38.500.

(A) a retirement plan if the beneficiary acquired the interest as a result of the death of an individual; the beneficiary's interest is exempt to the same extent that the individual's interest was exempt immediately before the individual died;

(B) an individual retirement account that has been transferred by the individual to the beneficiary during the individual's lifetime; the beneficiary's interest is exempt to the same extent that the individual's interest was exempt immediately before the transfer to the beneficiary;

(4) the money or other assets payable to a beneficiary from

(A) a retirement plan if the beneficiary acquired the money or other assets as a result of the death of an individual who would have had, during the individual's life, an exemption in the money or other assets;

(B) an individual retirement account if the beneficiary acquired the money or other assets as a result of the transfer of the money or other assets by an individual who would have had, at the time of the transfer, an exemption in the money or other assets.

According to AS 09.38.017(e)(5), for purposes of AS 09.38.017, "retirement plan" means:

(A) a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 409, 26 U.S.C. 414(d), 26 U.S.C. 414(e), or 26 U.S.C. 457 (Internal Revenue Code);

(B) an individual retirement account; and

(C) the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, the public employees' retirement system under AS 39.35, and the elected public officers' retirement system under former AS 39.37.

Paragraph (A) of this definition includes the majority of retirement plans that would apply to persons employed in the private sector, including those who belong to private-sector labor unions.

The exemptions under AS 09.38.017(a) are not absolute. Under AS 09.38.065(a), certain preferred creditors are allowed to seize a debtors' assets that would otherwise be exempt from seizure by an ordinary creditor under AS 09.38. These include spouses owed child support, employees not paid, and governments owed taxes. AS 09.38.065(b) clarifies that in some cases the Exemptions Act does not apply to debts secured by statutory lien or security interest, so for those kind of debts a person's interest in a retirement plan might not be exempt from collection under the Exemptions Act. AS 09.38.017(b) and (c) list two limited exceptions, as follows:

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

Federal Law

AS 09.38.015(a)(6) exempts from debt collection in Alaska "compensation or benefits paid or payable and exempt under federal law." In the limited time available at present to research this issue I was not able to compile an exhaustive list of all of the exemptions, and the exceptions to those exemptions, under federal law. However, there appear to be many. According to the U.S. Supreme Court, the garnishment of retirement benefits is generally prohibited by ERISA (for ERISA-qualified plans); the Social Security Act, 49 Stat. 620, as amended, 42 U.S.C. § 407 (1982 ed.); the Railroad Retirement Act, as amended, 47 Stat. 438, 45 U.S.C. § 231m(a) (1982 ed., Supp. V); the Civil Service Retirement Act, 5 U.S.C. § 8346(a); and the Veterans' Benefits Act, 38 U.S.C. § 3101(a) (1982 ed.).²

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² *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 372, 110 S. Ct. 680, 685, 107 L. Ed. 2d 782 (1990).