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OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201
January 23, 1986

(501) 371-2007

OPINION NO. 86-12

Honorable Nick Wilson
State Senator
P.O. Box 525
Pocahontas, AR 72455

Dear Senator Wilson:

This letter is in response to your inquiry concerning the application of Section 2 of Act 989 of 1985 to support decrees, judgments or orders entered prior to August 1, 1985.

Sections 2(A) and (B) of Act 989 provide:

Section 2. (A) Any decree, judgment or order which contains a provision for payment of alimony or support for any person through the Registry of the Court shall become a lien upon all property, both real and personal, not otherwise exempt by the Constitution of this State, owned by the non-custodial parent or which the non-custodial parent may afterwards or before the lien expires, acquire, for the respective amounts of support installments as they become due and remain unpaid. The decree, judgment or order shall not become a lien for any sum or sums prior to the date they severally become due or payable.

(B) The decree, judgment or order shall be recorded in the judgment records of the county of the Chancery Court issuing said order. Upon receipt of a certified copy of the decree, order or judgment the Chancery Clerk of any other county within the State of Arkansas shall record same and such shall become a lien effective the date of recording upon all real or personal property owned or thereafter acquired by the non-custodial parent situated in that county.

Section 1(D) provides:

(D) All orders requiring payments of money for the support and care of any child or children shall hereafter direct the payments to be made through the Registry of

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the Court unless the Court in its discretion determines that it would be in the best interest of the parties to direct otherwise.

Section 35 provides that the Act shall become effective August 1, 1985.

When these provisions are read together, as they must be in determining legislative intent, it appears that the Act applies only to support decrees properly filed and recorded in the appropriate judgment books after the effective date of the Act, or August 1, 1985. The paramount considerations in any retroactive application of the law are sufficient notice of the lien status and service to the noncustodial parent.

With respect to decrees entered prior to August 1, 1985, one possible option is that the custodial parent could obtain a modified decree under the court's equitable jurisdiction. The modified decree, filed after August 1, 1985, could provide for the payment of all accrued arrearages arising out of the prior decree. Section 5(A) of the Act contemplates the filing of motions to modify the original decree.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Patricia G. Cherry.

Sincerely,


STEVE CLARK
Attorney General

SC/PC/pw