



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2017-082

November 2, 2017

The Honorable Karilyn Brown  
State Representative  
P. O. Box 6677  
Sherwood, AR 72124-6677

Dear Representative Brown:

This is in response to your request for an opinion on the personal-property exemptions found in Article 9, section 2 of the Arkansas Constitution. Article 9, section 2 allows married individuals or heads of families to designate as “exempt from seizure on attachment, or sale on execution or other process from any court, on debt by contract” such personal property that does not “exceed[] in value the sum of five hundred dollars.”<sup>1</sup>

You ask two questions, which I have paraphrased as follows:

- 1) Is the five-hundred dollar sum stated in Ark. Const. art. 9, § 2 an absolute limit on personal-property exemptions, or can property in excess of five hundred dollars be exempted under a statute like Ark. Code Ann. § 16-66-209, which concerns proceeds of life, health, accident, and disability insurance?

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<sup>1</sup> Ark. Const. art. 9, § 2 states in full:

The personal property of any resident of this State, who is married or the head of a family, in specific articles to be selected by such resident, not exceeding in value the sum of five hundred dollars, in addition to his or her wearing apparel, and that of his or her family, shall be exempt from seizure on attachment, or sale on execution or other process from any court, on debt by contract.

2) If assets held in a pension or profit-sharing plan can be exempted at values over five hundred dollars pursuant to Ark. Code Ann. § 16-66-220, what other types of personal property can be exempted in excess of five hundred dollars?

## RESPONSE

The applicability of Article 9, section 2 to a given debtor varies with the nature of the property to be exempted, the origin of the debtor's liability, and the basis of the creditor's claim. As an initial matter, the property to be exempted must qualify as "personal property," and the exemption must be asserted against a "debt by contract."<sup>2</sup> If these prerequisites are satisfied, five hundred dollars is generally the maximum value of the exemption. For example, Article 9, section 2 may cap the personal-property exemptions of a debtor in bankruptcy at five hundred dollars.<sup>3</sup> But in a garnishment proceeding, a debtor may be able to claim an unlimited exemption for certain personal property despite the constitutional maximum.<sup>4</sup> Thus, the answer to your first question is "no." Article 9, section 2 is not an "absolute limit" on personal property exemptions.

Your second question, regarding the types of personal property to which the five-hundred dollar limit might not apply, is too fact-specific for a definitive answer.<sup>5</sup> A multitude of personal-property exemptions might be available to a debtor under

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<sup>2</sup> *Id.*; accord *Sanford v. Otasco, Inc.*, 268 Ark. 100, 101, 590 S.W.2d 285, 286 (1980) (stating that art. 9, § 2 "allows a person to select personal property" as exempt); *Watson v. State Dept. of Finance and Admin.*, 283 Ark. 287, 288, 675 S.W.2d 368, 368 (1984) (stating that art. 9, § 2 applies to debts "incurred as the result of a contract").

<sup>3</sup> See *In re Holt*, 894 F.2d 1005, 1008 (8th Cir. 1990) ("We therefore hold that section 16-66-209 [exempting life-insurance monies] is unconstitutional as applied to debtors in bankruptcy because it is in direct conflict with the overriding \$500 limitation imposed by article 9, section 2.").

<sup>4</sup> See *Clinical Study Centers, Inc. v. Boellner*, 2012 Ark. 266, 12-13, 411 S.W.3d 695, 702 (holding that an exemption for assets in individual retirement accounts valued over five hundred dollars "does not offend article 9, section 2 of the Arkansas Constitution").

<sup>5</sup> See Op. Att'y Gen. 2017-022 (noting that "it is difficult to reach any generally applicable conclusions that will fit every conceivable fact pattern" in response to an opinion request that "depend[s] to some degree on the particular surrounding facts and circumstances").

state or federal law. Whether a given exemption would have a maximum value of five hundred dollars cannot be assessed as a general matter.

## DISCUSSION

***Question 1: Is the five-hundred dollar sum stated in Ark. Const. art. 9, § 2 an absolute limit on personal-property exemptions, or can property in excess of five hundred dollars be exempted under a statute like Ark. Code Ann. § 16-66-209, which concerns proceeds of life, health, accident, and disability insurance?***

The five-hundred dollar sum stated in Article 9, section 2 is not an absolute limit on the value of personal property that a debtor can claim as exempt. First, Article 9, section 2 is only triggered if the debt is one “by contract.”<sup>6</sup> Second, courts have applied the five-hundred dollar limit from Article 9, section 2 primarily in bankruptcy proceedings and contract judgments executed directly against the debtor.<sup>7</sup> In these scenarios, debtors likely cannot rely on state law to exempt personal property “exceeding in value the sum of five hundred dollars.”<sup>8</sup> However, Arkansas statutes exempting specific types (but unlimited amounts) of personal property from *garnishment* may circumvent the five-hundred dollar limit.<sup>9</sup> So if a creditor attempts collection from a third-party garnishee, the debtor can generally claim as exempt personal property worth more than five hundred dollars.<sup>10</sup>

Property exempted under Article 9, section 2 must be “personal property,” and the debt in question must have arisen “by contract.” While “[p]ersonal property is not defined in the constitutional exemption,” courts have held that cash, wages owed,

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<sup>6</sup> Ark. Const. art. 9, § 2.

<sup>7</sup> See generally *Holt*, 894 F.2d 1005.

<sup>8</sup> Ark. Const. art. 9, § 2.

<sup>9</sup> See generally *Boellner*, 2012 Ark. 266, 411 S.W.3d 695; see also Ark. Code Ann. § 16-66-220 (“Pension and profit-sharing plans.”) (Repl. 2005).

<sup>10</sup> *Boellner*, 2012 Ark. 266 at 12-13, 411 S.W.3d at 702 (upholding trial court’s decision that exempting up to \$325,000.00 from garnishment was proper under Ark. Code Ann. § 16-66-220(a)(1)).

and a number of other non-real estate assets may qualify.<sup>11</sup> But courts have taken care to constrain Article 9, section 2 to contractual debts. Thus, a debtor who fails to pay sales and income taxes cannot assert the five-hundred dollar exemption. A “debt for delinquent taxes” is statutory, and Article 9, section 2 “do[es] not apply to a liability created by statute.”<sup>12</sup>

Even for debtors claiming personal-property exemptions against a contractual liability, the five-hundred dollar constitutional limit does not apply uniformly. If the debtor is in bankruptcy, Article 9, section 2 may limit the value of personal property that can be claimed as exempt under Arkansas law. Noting that unsecured creditors have “no means of reaching the proceeds or cash value of [life-insurance] policies” once a bankruptcy debtor is discharged, the Eighth Circuit held that an “absolute exemption” for the insurance proceeds would interfere with the five-hundred dollar limit “controlled by the constitution.”<sup>13</sup> The Court reached this result notwithstanding Ark. Code Ann. § 16-66-209, which provides that “all moneys paid or payable” under a life-insurance policy “shall be exempt from liability or seizure.”<sup>14</sup> The Court found that this “unlimited exemption” for life-insurance proceeds “conflict[ed] with the overriding \$500 limitation imposed by article 9, section 2.”<sup>15</sup> Section 16-66-209 was therefore “unconstitutional as applied to debtors in bankruptcy.”<sup>16</sup>

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<sup>11</sup> *Sanford*, 268 Ark. at 103, 590 S.W.2d at 285-86, 287 (“We find nothing ... which would prohibit a debtor from selecting money or wages due as part or all of his exemptions. Likewise, there is no reason why the debtor cannot schedule both money and property as exempt so long as the total does not exceed the \$500 limit.”).

<sup>12</sup> *Watson*, 283 Ark. at 288, 675 S.W.2d at 369 (internal citation omitted); *accord* Op. Att’y Gen. 97-031 (“[I]t is my opinion that any debt for delinquent personal property taxes would be a liability created by statute rather than a debt incurred as the result of a contract.”).

<sup>13</sup> *Holt*, 894 F.2d at 1008 (considering exemptions claimed by debtors in Chapter 7 bankruptcy) (internal citations omitted).

<sup>14</sup> Ark. Code Ann. § 16-66-209(a) (Supp. 2015).

<sup>15</sup> *Holt*, 894 F.2d at 1008.

<sup>16</sup> *Id.*; *accord In re Williams*, 93 B.R. 181 (E.D. Ark. 1988) (personal-property exemptions under Ark. Code Ann. § 16-66-209 were unavailable to Chapter 7 debtor to the extent the exemptions surpassed five hundred dollars); *In re Hudspeth*, 92 B.R. 827 (W.D. Ark. 1988) (same); *In re Giller*, 127 B.R. 215 (W.D. Ark. 1990) (personal-property exemptions under Ark. Code Ann. § 16-66-218 were unavailable to Chapter 11 debtor to the extent the exemptions surpassed five hundred dollars).

With respect to *garnishment*, however, an “unlimited exemption” statute such as section 16-66-209 is a valid expression of legislative authority.<sup>17</sup> In bankruptcy proceedings, exemptions claimed under state law must be consistent with the maximum amounts “permitted by the Arkansas Constitution.”<sup>18</sup> There is no such restriction on the value of property that can be exempted from garnishments, a distinction the Arkansas Supreme Court found crucial when holding that a debtor could exempt retirement-account assets in excess of five hundred dollars.<sup>19</sup>

And rather than implicating Article 9, section 2 by purporting to exempt “all personal property” from collection, section 16-66-209 and similar provisions only exempt “certain funds from general garnishment statutes.”<sup>20</sup> That is, in the garnishment context, these exemption statutes amount to a “process prohibition” instead of an “absolute exemption” that would conflict with Article 9, section 2.<sup>21</sup> If a debtor claims an exemption when a third party is garnished, “in the future the creditor may reach the funds [once they are] in the possession of the debtor.”<sup>22</sup> The creditor would not be foreclosed from collection, as might be the case after discharge if an unlimited exemption were claimed by a debtor in bankruptcy.<sup>23</sup> For these reasons, a statute “exempt[ing] only a certain type of fund from

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<sup>17</sup> *Boellner*, 2012 Ark. 266 at 8-9, 411 S.W.3d 695, 699-700 (“This court has ... repeatedly held that the constitution of this state is not a grant but a limitation of power, and, unless the power of the General Assembly is limited, ... its power is supreme.”) (Internal quotation omitted.).

<sup>18</sup> Ark. Code Ann. § 16-66-209(a); *see generally* Ark. Code Ann. § 16-66-218 (Repl. 2005) (“State bankruptcy proceedings.”).

<sup>19</sup> *Boellner*, 2012 Ark. at \* 9, 411 S.W.3d at 700 (noting that while the Eighth Circuit in *Holt* “hinged its decision ... on the fact that the Bankruptcy Code limited bankruptcy debtors to the exemption amount permitted by the Arkansas Constitution,” the “same restriction does not apply where non-bankruptcy debtors ... are concerned”).

<sup>20</sup> *Id.* at 12, 411 S.W.3d at 702 (analyzing Ark. Code Ann. § 16-66-220(a)(1), which exempts assets held in a “pension, profit-sharing, or similar plan or contract, including a retirement plan for self-employed individuals, or [in] an individual retirement account or an individual retirement annuity”).

<sup>21</sup> *Holt*, 894 F.2d at 1008 (internal quotation omitted).

<sup>22</sup> *Id.*

<sup>23</sup> See text accompanying notes 13-16, *supra*.

garnishment ... does not offend article 9, section 2 of the Arkansas Constitution.”<sup>24</sup>

It is therefore my opinion that the five-hundred dollar sum from Article 9, section 2 cannot be characterized as a “maximum cap on exemptions.”<sup>25</sup> Assuming the debtor has a contract-based liability and the property to be exempted qualifies as personal property, the question of whether exemptions will be limited to five hundred dollars is dependent on the circumstances of the case. A debtor in bankruptcy may be constrained to five-hundred dollars’ worth of state-law exemptions.<sup>26</sup> But a debtor whose property is garnished from a third party can likely claim exemptions (under Ark. Code Ann. § 16-22-209, for example) in excess of five hundred dollars.

***Question 2: If assets held in a pension or profit-sharing plan can be exempted at values over five hundred dollars pursuant to Ark. Code Ann. § 16-66-220, what other types of personal property can be exempted in excess of five hundred dollars?***

Because it calls for a fact-intensive analysis beyond the scope of an opinion response, I cannot conclusively answer your second question.<sup>27</sup> The *Boellner* Court held that assets in a pension or profit-sharing plan were properly exempt under Ark. Code Ann. § 16-66-220 when a creditor tried to garnish those assets from a third-party credit union.<sup>28</sup> But the fact that the creditor targeted “assets ...

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<sup>24</sup> *Boellner*, 2012 Ark. 266 at 12-13, 411 S.W.3d at 702.

<sup>25</sup> *Id.* at \* 8, 411 S.W.3d at 700 (noting that “this court has never held that article 9, section 2 of the Arkansas Constitution serves as a maximum cap”).

<sup>26</sup> Any number of federal exemptions exceeding five hundred dollars might be available to a debtor in bankruptcy. Compare 11 U.S.C. § 522(d) (stating that the “following property may be exempted under ... this section”) with Ark. Code Ann. § 16-66-217 (“Residents of this state ... shall have the right to elect either ... property exemptions provided by the Constitution and the laws of the State of Arkansas; or ... property exemptions provided by 11 U.S.C. § 522(d).”). My discussion of Art. 9, section 2 in the bankruptcy context is limited to situations in which the debtor has elected “exemptions provided by the Constitution and the laws of the State of Arkansas.”

<sup>27</sup> See Op. Att’y Gen. 2015-010 (stating that “factual inquiries ... are outside the scope of an opinion from this office”).

<sup>28</sup> 2012 Ark. 266 at 2, 411 S.W.3d at 697.

in an IRA account”<sup>29</sup> was not dispositive of whether the debtor could exempt the property at values over five hundred dollars. Instead, the Court confirmed that Article 9, section 2 simply does not apply to garnishments. The “unlimited exemption” under section 16-66-220 was constitutional due to the method of collection, not because of the property involved.

A statute exempting a certain type of property might be valid in the garnishment context and invalid (assuming the debtor elected state-law exemptions) in the bankruptcy context. Thus, even an exhaustive list of the personal-property exemptions available under Arkansas law would not necessarily depict the types of property that can be exempted at values over five hundred dollars. For these reasons, I must decline to respond further to your second question.

Sincerely,



LESLIE RUTLEDGE  
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<sup>29</sup> *Id.*