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OPINION	:	No. 81-1014
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of	:	<u>JUNE 16, 1982</u>
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THE HONORABLE EDWIN L. MILLER, JR., DISTRICT ATTORNEY,
COUNTY OF SAN DIEGO, has requested an opinion on the following question:

May a district attorney, in enforcing a child support obligation, disclose to a commercial credit bureau the fact that an absent parent is delinquent in child support payments without violating the confidentiality provisions of Welfare and Institutions Code sections 11478 and 10850?

CONCLUSION

A district attorney may disclose to a commercial credit bureau, without violating the provisions of confidentiality contained in Welfare and Institutions Code sections 11478 and 10850, the fact that an absent parent is delinquent in child support payments if such disclosure is made to enforce the obligation to support.

ANALYSIS

The Social Security Act, in title IV (42 U.S.C. §§ 601-676), provides grant-in-aid funds to the states, including California, to augment state funds dispersed to families with dependent children (so-called AFDC). As a condition to the receipt of AFDC benefits, the applicant for the benefits must assign to the state "any rights to support from any other persons such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid and, (ii) which have accrued at the time such assignment is executed." (42 U.S.C. § 602(a)(26)(A).) Accordingly, California has enacted Welfare and Institutions Code section 11477(a)¹ which requires that each applicant for AFDC benefits "[a]ssign to the county any rights to support from any other person such applicant may have in their own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and which have accrued at the time such assignment is made. Receipt of public assistance under this chapter shall operate as an assignment by operation of law. An assignment of support rights to the county shall also constitute an assignment to the state."

California, as required by the Social Security Act (42 U.S.C. § 651-664), has also enacted a plan for enforcing the child support obligations of absent parents. (§§ 11475-11492.) The state plan is designed to secure support for families with dependent children and to determine paternity if necessary for the purpose of establishing responsibility for support. (See § 11475.) Under this plan, each county is required to "maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively enforcing the obligation of parents to support their children and determining paternity in the case of a child born out of wedlock." (§ 11475.1.) The district attorney is directed to "take appropriate action, both civil and criminal, to enforce this obligation when the child is receiving public assistance and when requested to do so by the individual on whose behalf the enforcement efforts will be made when the child is not receiving public assistance." (§ 11475.1.) The district attorney may enter into "cooperative arrangements" with other county departments, as necessary to carry out his responsibilities, pursuant to plans approved by the State Department of Social Services. (§ 11475.1.)

The county welfare department must refer all cases where a parent is absent from the home, or where the parents are unmarried and parentage has not been judicially determined, to the district attorney immediately at the time the application for assistance, or the certificate of eligibility, is signed by the applicant or recipient. (§ 11476.) The district attorney then "shall investigate the question of nonsupport or paternity and shall

¹ Unless otherwise indicated, all future statutory references will be to provisions of the Welfare and Institutions Code.

take all steps necessary to obtain support for the needy child and determine paternity in the case of a child born out of wedlock." (§ 11476.) The district attorney must, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. (§ 11476.)

The enforcement plan is designed to assure that the federal and state governments are to some extent reimbursed for AFDC expenditures. The district attorney's statutory duty of enforcement is a significant responsibility. As stated in *In re Marriage of Shore* (1977) 71 Cal.App.3d 290, 295:

"[T]he enforcement of child support rights involves not only a matter of private or local concern, but poses an important question for the federal and state governments as well."

We are asked whether or not a district attorney may disclose to a commercial credit bureau the fact that an absent parent is delinquent in child support payments. We are informed that some district attorneys employ the services of a credit bureau to obtain from it financial data on an absent parent who is in arrears on support payments. The question before us is whether or not a district attorney may reciprocate and inform a credit bureau that an absent parent is delinquent in support payments. The disclosure, we are told, would be limited to the name of the parent, the identity of the county, the district attorney's case number and the amount owed. The effect would be to pass on to the credit bureau, for storage in its files, the fact that the absent parent owes a debt to the government. Such fact, in the possession of a credit bureau, may affect applications of an absent parent for loans, employments, insurance policies or licenses.² The purpose of the district attorney's action in reporting the fact of delinquent payments to a credit bureau would be to motivate the absent parent to regain or improve his credit standing by paying his government obligations as well as his private debts.

The present inquiry directs us down two paths. First, does the law allow the district attorney to make use of a commercial credit bureau by reporting to it information that an absent parent is delinquent in child support payments? Secondly, is such information confidential making its disclosure to a commercial credit bureau unlawful?

² Consumer credit reporting is regulated under the following laws: Consumer Credit Reporting Agencies Act (Civ. Code, §§ 1785.1-1785.35); Investigative Consumer Reporting Agencies Act (Civ. Code, §§ 1786-1786.56); The Holden Credit Denial Disclosure Act (Civ. Code, §§ 1787.1-1787.3); Robbins-Rosenthal Fair Debt Collection Practices Act (Civ. Code, §§ 1788-1788.32); and Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681t).

Nothing in state law prohibits a district attorney from using the services of a credit bureau. As we have seen, under section 11475.1 the district attorney has the responsibilities for "promptly and effectively enforcing the obligation of parents to support their children" and for taking "appropriate action, both civil and criminal, to enforce the obligation. . . ." In accordance with section 11476, "all cases where a parent is absent from the home" are referred to the district attorney. Moreover, the district attorney is directed to "take all steps necessary to obtain support for the needy child. . . ." The district attorney, under section 11478, has access to information concerning the location, income and property of absent parents. (See 62 Ops.Cal.Atty.Gen. 494 (1979).) When support rights are assigned to the state pursuant to section 11477, the district attorney is designated to collect the payments, as section 11457 provides in part:

"Money from noncustodial parents for the support of a needy child with respect to whom an assignment under Section 11477 has been made shall be paid directly to the district attorney or his designee and shall not be paid directly to the family. Such absent parent support payments, when collected by or paid through any public officer or agency, shall be transmitted to the county department providing aid under this chapter."³

The district attorney may enter into plans of cooperation with other county agencies, or reciprocal arrangements with other states. (§§ 11475.1 and 11476.) Under the provisions of section 11476.1 he may enter into an agreement for entry of judgment for periodic child support payments from a noncustodial parent. Even when public assistance to the family ceases, the district attorney under section 11476 must:

"(1) Continue to enforce support payments from the noncustodial parent for a period not to exceed three months from the month following the month in which such family ceased to receive assistance and pay all amounts so collected to the family; and

"(2) At the end of such three-month period, if after written notice to the individual, the district attorney is requested to do so by the individual on whose behalf the enforcement efforts will be made, continue to enforce such support payments from the noncustodial parent."

We glean from the statutes, particularly sections 11475.1 and 11476, a duty to enforce child support obligations which extends beyond the filing of lawsuits. The district attorney must take all steps necessary including investigation of cases, location of absent parents and their assets, and collection of unpaid obligations. (62 Ops.Cal.Atty.Gen.

³ See also Civil Code section 4702.

711 (1979).) May the district attorney, then, use a commercial credit bureau as a step necessary to enforce a child support obligation owed to the government? We conclude that he may do so.

Credit bureaus are regulated by state and federal laws. The Legislature made this finding and declaration in the Consumer Credit Reporting Agencies Act (Civ. Code, § 1785.1(b)):

"Consumer credit reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers."

Likewise, in the Investigative Consumer Reporting Agencies Act the Legislature found and declared (Civ. Code, § 1786(a)):

"Investigative consumer reporting agencies have assumed a vital role in assembling and evaluating information on consumers for employment and insurance purposes."

Having made these findings and declarations, the Legislature proceeded to enact rules which would meet the needs for consumer information and which would be fair and equitable to the consumer regarding confidentiality, accuracy, relevancy and utilization. (Civ. Code, §§ 1785.1(d) and 1786(c).) Consequently, information which reaches the files of a credit bureau may be released only in the form of reports which are limited in content and restricted as to use. (Civ. Code, §§ 1785.11, 1785.13, 1785.14, 1786.10, 1786.12, 1786.16, 1786.18 and 1786.20.) The person who is the subject of the report may examine the bureau's or agency's file and, if he disputes information in the file, may request an addition, correction, deletion, or the inclusion of a statement of the nature of the dispute. (Civ. Code, §§ 1785.10, 1785.16, 1786.10, 1786.22 and 1786.24.) A person may recover damages for a violation of the reporting rules. (Civ. Code, §§ 1785.31 and 1786.50.) Also an action may be brought against a consumer credit reporting agency, any user of information, "or any person who furnishes information" to the agency which is "false information furnished with malice or wilful intent to injure such consumer." (Civ. Code, § 1785.32; see also Civ. Code, § 1786.52.) Both the Consumer Credit Reporting Agencies Act and the Investigative Consumer Reporting Agencies Act apply to "government or government subdivision or agency, or other entity." (Civ. Code, §§ 1785.3(a) and 1786.2(a).)⁴

⁴ The federal provisions regulating credit reporting agencies are similar to the California provisions. (15 U.S.C. §§ 1681-1681t.)

The federal government has determined that the reporting of debts owed to the government to credit bureaus is an effective means of enforcing payment. For example, 4 CFR § 102.2 provides:

"Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. In the initial notification, the debtor should be informed of the basis for the indebtedness, the applicable requirements or policies for charging interest and *reporting delinquent debts to commercial credit bureaus*, and the date by which the payment is to be made (date due). The date due should be specified and, normally, should not be more than 30 days from the date of the initial notification. Three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. Further exceptions may be made where it is necessary to protect the Government's interests (e.g., the statute of limitations (28 U.S.C. 2415)). Agencies should respond promptly to communications from the debtor. Agencies should advise debtors who dispute the debt to furnish available evidence to support their contentions." (Emphasis added.)

And 4 CFR § 102.4 states:

"*Agencies shall develop and implement procedures for reporting delinquent debts to commercial credit bureaus.* In the absence of a different rule prescribed by statute, contract, or regulation, a debt is considered delinquent if not paid by the date due specified in the initial notification, unless satisfactory payment arrangements are made by the date due. Agency procedures for reporting delinquent debts to credit bureaus must give due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. § 552a, which includes the following requirements: (a) Promulgate a 'routine use' for the disclosure; (b) keep an accounting for disclosures and make them available to the debtor; (c) provide the credit bureaus with corrections and notations of disagreement by the debtor, and (d) make reasonable efforts to assure that the information to be reported is accurate, complete, timely, and relevant. Prior to exercising the option of reporting delinquent debts to commercial credit bureaus, agencies should send a demand letter advising the debtor that such reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed." (Emphasis added.)

According to TEMPO,⁵ No. 17, April 1, 1981, an official publication of the United States Department of Health and Human Services, Office of Child Support Enforcement, a state agency may report nonpayments of absent parents to credit bureaus:

"Child support enforcement agencies may report delinquent payments to credit bureaus. The information will be included in the absent parent's credit record and will be made available to requesting creditors. This reporting process may well prove to be an effective technique to encourage payment of arrearages because absent parents may be denied credit based on failure to pay support obligations. Credit bureau reports follow absent parents throughout the country whenever consumer credit is requested. If the absent parent makes full payment and continues to make regular and timely payments, the IV-D agency should also report this information to the bureau."

Since the district attorney is responsible for promptly and effectively enforcing the obligation of parents to support their children he may use a credit bureau as a conduit between the government and the debtors to generate the payment of the debts.

SECTION 11478:

Section 11478 requires all state, county and local agencies on request to supply the county welfare department, the county probation department or the district attorney "with all information on hand relative to the location, income, or property of any absent parents, notwithstanding any other provisions of law making such information confidential. . . ." The section further provides that:

"[T]he district attorney or county probation officer shall use it [the information] only for the purpose of enforcing the support liability of such absent parents or for locating parents and children abducted by them or for the prosecution of other persons mentioned in this section, and neither shall use the information or disclose it, for any other purpose."

A district attorney who discloses such information to a credit bureau and who does so to motivate an absent parent to pay his debt would be "enforcing the support liability" of such absent parent and, in our opinion, would not be misusing the information in violation of section 11478.

⁵ Techniques for Effective Management of Program Operations.

The information which comes into the possession of the district attorney through section 11478 may be used by the district attorney for the purposes described in that section "notwithstanding any other provisions of law making such information confidential." (§ 11478.)

SECTION 10850

Section 10850 provides in part as follows:

"(a) Except as otherwise provided in this section, all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of such program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program. The disclosure of any information which identifies by name or address any applicant for or recipient of such grants-in-aid to any committee or legislative body is prohibited, except as provided in subdivision (b)."

We discern no inconsistency between section 10850 and 11478. Both sections make certain welfare records confidential but provide for exceptions. Section 10850 applies to "applications and records" concerning any individual and forbids their examination for any purpose not directly connected with the "administration" of the federal-state program, or any "investigation, prosecution, or civil or criminal proceeding conducted in connection with the administration of any such program." Section 11478 applies to "all information on hand relative to the location, income, or property of absent parents," when requested from state, county and local agencies, and prohibits its use "except for the purpose of enforcing the support liability of such absent parents." If the district attorney discloses to a credit bureau absent parent information obtained by an examination of applications and records maintained in a federal-state welfare program, such disclosure would be directly connected with the administration of such program, namely, reimbursement of AFDC benefits paid by the federal and the state governments.⁶ If the district attorney discloses to a credit bureau absent parent information obtained from

⁶ Section 10850 refers to applications and records made or kept by any public officer or agency in connection with the administration of public social services for which grants-in-aid are received from the federal government. We assume that the district attorney's own records would be covered by this section.

state and local welfare agencies generally, such disclosure would be for the purpose of enforcing support liability, namely, reimbursement of AFDC benefits paid by the federal and the state governments.

The information to be disclosed, at most, will include the identity of the absent parent, the amount owed, the county to which it is owed and the district attorney's case number. No disclosure of the names of applicants and recipients of AFDC benefits is intended. The federal statute which is parallel to section 10850 is 42 U.S.C. section 602(a)(9) and this statute requires a state plan for aid and services to needy families with children to:

"[P]rovide safeguards which restrict the use [or] disclosure of information concerning *applicants or recipients* to purposes directly connected with (A) The administration of the plan of the State approved under this part, the plan or program of the State under part B, C, or D of this subchapter or under subchapter I, X, XIV, XVI, XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient." (Emphasis added.)

We conclude that neither section 10850 nor the underlying federal statute would be violated by a disclosure of the fact of an absent parent's unpaid support obligation to a credit bureau.

Our conclusion is supported by *Haskin v. San Diego County Dept. of Public Welfare* (1980) 100 Cal.App.3d 961. In *Haskins* the county was sued for allowing an employee of the welfare department to obtain from confidential records information concerning her ex-husband's girlfriend and causing the girlfriend to become the subject of an investigation. The Court of Appeal found that this disclosure did not violate section 10850, explaining at pages 969-970:

"We assume from the pleadings Esther [the employee] did in fact learn from an unauthorized viewing of welfare records a fact not to be improperly disclosed or used, to wit, the identity of a welfare recipient. We infer that this fact, together with the charge that Margaret [the girlfriend] was living with an unrelated male, James [ex-husband], was related to the DPW [Department of Public Welfare] investigator. Thus the only 'disclosure' or 'use' that can be reasonably inferred from the pleading, other than its communication to the welfare fraud investigator, was to store it in her mind—cogitate on it—relate it in a cerebral exercise to other facts of which she was cognizant. There is no charge of any other species of use or disclosure made in these pleadings of such fact or facts. Thus at the core of the charge of improper use or disclosure is a communication to a fellow DPW employee charged with the duty of investigating wrongdoing in connection with the administration of the welfare program. Esther's use or disclosure was patently for a purpose 'directly connected with the administration of [such public service].' (Welf. & Inst. Code, § 10850.) She sought to stimulate an 'investigation' in connection with the administration of the welfare program."

Similarly, the district attorney's enforcement of child support obligations is directly connected with the administration of AFDC. (See *Jonon v. Superior Court* (1979) 93 Cal.App.3d 683, 690-692.)

In *In re Lynna B.* (1979) 92 Cal.App.3d 682, the Court of Appeal permitted disclosure of information about a child acquired under the aid to families with dependent children laws, which information was confidential under Welfare and Institutions Code section 10850. The court reasoned (92 Cal.App.2d at 705):

"The legislative purpose in providing for confidentiality of public social services records is to protect the right of privacy of the recipient of such benefits. (Cf. Gov. Code, § 6254, 'nothing in this chapter shall be construed to require disclosure of records that are: . . . (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy') The privilege for confidential records under Welfare and Institutions Code section 10850 is a conditional one. The section itself provides for release of records for specified purposes. Certainly when the best interests of a minor child are at stake, the need for disclosure of relevant information 'in the interest of justice' for the minor child outweighs the need for confidentiality." (See also *In re Jeannie Q.* (1973) 32 Cal.App.3d 288, 305.)

Certainly, it is in the interest of the dependent child that the district attorney make a diligent effort to collect moneys owed by the absent parent. An obvious side effect of such effort would be the revival of ongoing payments from the absent parent.

Earlier opinions of this office have focused on the disclosure of the identities of applicants and recipients of public aid. (See 64 Ops.Cal.Atty.Gen. 756 (1981) (police department may not allow public inspection of loss report of food stamp recipient); 62 Ops.Cal.Atty.Gen. 494 (1979) (auditor general performing audit of state welfare agency has access to disbursement records which include names of applicants and recipients); 62 Ops.Cal.Atty.Gen. 798 (1979) (county welfare director may not release to board of supervisors the names of applicants for and recipients of public assistance); 22 Ops.Cal.Atty.Gen. 224 (1953) (board of supervisors when discussing welfare matters in open and public meetings should avoid disclosing that any particular person is applying for or receiving aid); 9 Ops.Cal.Atty.Gen. 45 (1947) (a grand jury investigating charges of misconduct against welfare officials should keep confidential the identities of persons receiving aid).) We do not consider disclosure of the identity of an absent parent delinquent in support payments, where necessary to enforce a legal obligation, to be protected by sections 10850 or 11478.

To complete our discussion, some reference should be made to the Information Practices Act (Civ. Code, § 1798 et seq.), the Public Records Act (Gov. Code, § 6250 et seq.) and the right to privacy (Cal. Const., art. I, § 1). The Information Practices Act limits governmental disclosure of confidential or personal information to specified circumstances. (See Civ. Code, § 798.24.) However, the legislation is directed at records maintained by state agencies and not local entities such as a district attorney's office. (Civ. Code, § 1798.3(d).) We do note that Civil Code section 1798.68 requires state agencies to disclose personal or confidential information to a district attorney upon request when the transfer of such information is necessary for the district attorney to perform his constitutional or statutory duties and his use of it is compatible with the purpose for which it was collected; when the transfer is required by state or federal law; or when required for an investigation of unlawful activity unless such disclosure is otherwise prohibited by law. (See Civ. Code, § 1798.24(e), 1798.24(f) and 1798.24(o).)

The Public Records Act is designed to give the public access to the records of government, including those of local entities, by allowing inspections unless the records are excepted from disclosure. (Gov. Code, §§ 6250(d), 6253(a) and 6254.) However, a local law enforcement agency is not required to disclose its investigatory files. (Gov. Code, § 6254(f); 64 Ops.Cal.Atty.Gen. 756, 758 (1981).) Though such files are exempt from disclosure, the agency is permitted to disclose them unless otherwise prohibited by law from doing so. (Gov. Code, § 6254; *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931, 941.) Consequently, while the district attorney's AFDC enforcement files

need not be opened for public inspection, the district attorney may use information in those files concerning child support payment delinquencies by furnishing this information to a credit bureau. We view this disclosure to be substantially similar to the disclosure which would follow from the filing in court of civil or criminal pleadings, or the pursuing of other civil remedies such as garnishments and wage attachments, which would necessarily reveal the identity of the absent parent and the fact of his debt.

As stated earlier, we do not have an issue involving the disclosure of the name of an applicant or recipient. Any concern for the personal privacy of an individual is focused on the absent parent who owes money to the government which has been assigned his obligation. We have already discussed the safeguards that the law has built into the practices of credit bureaus, which safeguards were found and declared by the Legislature to assure "fairness, impartiality, and a respect for the consumer's right to privacy." (Civ. Code, §§ 1785.1(c) and 1786(b).) The privacy provision became part of the California Constitution in 1972 and the consumer reporting laws were enacted in 1975. (Cal. Const., art. 1, § 1.) A strong presumption favors the Legislature's interpretation, by subsequent statutory enactment, of a constitutional provision. (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 692; 65 Ops.Cal.Atty.Gen. 4, 7 (1982).) With the protections provided by the Consumer Credit Reporting Agencies Act and the Investigative Consumer Reporting Agencies Act, we conclude that informing a credit bureau of the fact that an absent parent is delinquent in child support payments would not violate that person's right to privacy. We believe such person is indistinguishable from any other debtor.

We conclude that a district attorney may disclose to a commercial credit bureau, without violating the provisions of confidentiality contained in Welfare and Institutions Code sections 11478 and 10850, the fact that an absent parent is delinquent in child support payments if such disclosure is made to enforce the obligation to support.
