

**In the United States Bankruptcy Court**  
**for the Northern District of Iowa**  
**Western Division**

---

WILLIAM JOSEPH SAUER  
Debtor.

Bankruptcy No. X89-00005S  
Chapter 7

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER RE:  
TRUSTEE'S OBJECTION TO EXEMPTIONS**

---

**FINDINGS OF FACTS**

When he filed bankruptcy, William Joseph Sauer (SAUER) was an employee of Nuebel Chevrolet, Inc. in LeMars, Iowa. Prior to bankruptcy, Clarence Mayer, a judgment creditor, garnished Sauer's wages using Iowa Code Ch. 642.

As a result of the garnishment, Nuebel Chevrolet, Inc. sent to the Plymouth County sheriff four checks totaling \$343.88. The check numbers, dates and amounts of each check are set out as follows:

Check No.	Date of Check	Amount of Check
15854	12-2-88	\$ 84.10
15895	12-9-88	85.75
16012	12-16-88	85.24
16052	12-23-88	88.79

Sauer filed his chapter 7 case on January 3, 1989. The trustee, Donald H. Molstad (TRUSTEE) requested a turnover of these funds from the Plymouth County sheriff.

The sheriff endorsed the four checks and sent them to the trustee on or about February 14, 1989.

Sauer claimed the money as exempt wages under Iowa Code §627.6(9)(c). Trustee objected.

**DISCUSSION**

The debtor claims the garnished funds turned over to the trustee as exempt as "accrued wages" under Iowa Code §627.6(9)(c).

The trustee objects to the claim arguing that once the wages were turned over by the employer to the sheriff, the money lost its character as "accrued wages."

Debtor contends, however, that so long as the wages had not been paid to him, they were still "accrued" within the meaning of the exemption statute.

The court finds no cases defining "accrued wages" within the meaning of Iowa Code §627.6(9)(c). A workable general definition of "accrued" for purposes of the Iowa exemption statute is "earned, but unpaid."

The dispute in this case seems to center on the meaning of the term "unpaid." Debtor argues that because he did not receive the wages, they were unpaid as to him. The trustee argues that the employer paid the wages in satisfaction of the debtor's obligation to the garnishing creditor and therefore the wages were paid.

In Iowa, exemption laws are liberally construed in favor of the debtor. Shepard v. Findely, 204 Iowa 107, 214 N.W. 676, 678 (1927).

The court does not believe that the decision in this case depends on the nature of the asset at the time of the filing of the case. It turns instead on the identity of the asset at the time of garnishment. 11 U.S.C. §522(g)(1).

Trustee obtained from the sheriff the checks which had been sent to the sheriff by the employer. There is no evidence that the trustee brought any action against the sheriff under 11 U.S.C. §§547 or 548. The surrender was apparently in response to a turnover demand. This demand would have been within the trustee's power and authority under either §542 or §543 of the Code.

Under 11 U.S.C. §522(g), the debtor may exempt such recovered property if the debtor could have exempted such property "if such property had not been transferred" and if the transfer by the debtor was not a voluntary one.

The garnishment was not a voluntary transfer and the court must look at the asset claimed as exempt as if the transfer from the employer to the sheriff had not been made. 11 U.S.C. §522(g).

Had there been no garnishment, the wages would be in the possession of the employer and would be "accrued wages" within the meaning of Iowa Code §627.6(9)(c).

### CONCLUSIONS OF LAW

The \$343.88 recovered by the trustee from the Plymouth County sheriff may be exempted by the debtor as wages under Iowa Code §627.6(9)(c) pursuant to 11 U.S.C. §522(g)(1)(A) and (B).

### ORDER

Trustee's objection to the claim of exemption is overruled. Judgment shall enter accordingly.

SO ORDERED ON THIS 26th DAY OF APRIL, 1989.

William L. Edmonds  
Bankruptcy Judge

