

The State of South Carolina



Opinion No 87-37

Office of the Attorney General

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April 22, 1987

Mr. Michael Grant LeFever
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Workers' Compensation Commission
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Dear Mr. LeFever:

You have requested the opinion of this Office whether the 25% penalty provided by Section 42-9-260, Code of Laws of South Carolina, 1976 (1986 Cum.Supp.) is to be paid to the employee or to the Workers' Compensation Commission. Section 42-9-260 provides, inter alia, that an employer or carrier may not suspend or terminate compensation benefits except in accordance with the method and procedure prescribed by the Commission.¹ Section 42-9-260 additionally provides:

Failure to comply with such rule as to termination or suspension of benefits shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld without prior Commission approval; provided, such penalty shall not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.

This provision does not express to whom the "penalty" is to be paid, thus the statute is unclear or ambiguous in this regard.

I note at the outset that ordinarily this Office would defer to any reasonable interpretation of this provision that has been adopted by the Commission. Cf., Dunton v. South Carolina Board

¹ R67-10, Regulations of the Workers' Compensation Commission, provides the procedure for termination of compensation payments that are being paid pursuant to an award or an agreement.

Mr. Michael Grant LeFever

Page 2

April 22, 1987

of Examiners in Optometry, S.C. Sup. Ct. Op. No. 22661 (filed February 2, 1987); Emerson Electric Company v. Wasson, 286 S.C. 394, 339 S.E.2d 118 (1986). Deference is particularly warranted in this context since § 42-3-180 provides that the Commission is the exclusive forum for determination of all questions arising under the South Carolina Workers' Compensation law [Title 42 of the South Carolina Code]. Nevertheless, we are informed by the Commission's staff that the Commission has not adopted a definitive interpretation of this provision.

Any attempt to determine the legislative intent of a particular provision begins with a review of the language of the statute. An intrinsic review of the language of § 42-9-260 does not remove the ambiguity relative to the disposition of the recovered penalty. "Penalty" is an inexact or elastic term with many different meanings. 36 Am. Jur. 2d Forfeitures and Penalties, § 2; 70 C.J.S. Penalties, § 9. In its ordinary significance "penalty" has been defined by our Court as:

...a sum of money exacted, by way of punishment for doing some act that is prohibited, or omitting to do some act that is required to be done....

South Carolina State Highway Department v. Southern Railway Company, 239 S.C. 227, 230, 122 S.E.2d 422 (1961). While most frequently "penalty" refers to a sum of money payable to the sovereign power, it may also be used as constituting an extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged. 36 Am. Jur. 2d, supra, § 2. Moreover "[w]here a penalty is created by statute and nothing is said in the statute as to who may recover it, and it is not created for the benefit of an aggrieved party, and the offense is not against an individual, such penalty belongs to the State." 36 Am. Jur. 2d, supra, § 67, at 655.

Although there is no express guidance within § 42-9-260 directing to whom the penalty is to be paid, there are indications that suggest the penalty is not solely punitive in nature for actions against public policy, but is remedial as well and exists for the benefit of the employee. Reference in this regard is made to the proviso wherein the penalty is abated if the employee has returned to gainful employment at a similar income. Thus, there is at least some indication within the language of the statute that the 25% penalty is intended to compensate the employee for the delay in receipt of compensation occasioned by the employer. However, we cannot conclude that the statutory language is clear as to the disposition of the penalty and thus we must seek assistance as to the statute's intent by considering the South Carolina Workers' Compensation Law in its entirety rather than relying upon the isolated phraseology of this single provision. Cf., City of Columbia v. Niagara Fire Insurance Company, 249 S.C. 388, 154 S.E.2d 674 (1967).

There are several principles that guide us in our attempt to determine the legislative intent. Where the legislature has

Mr. Michael Grant LeFever

Page 3

April 22, 1987

expressed its intention clearly in one part of the law, it will be presumed that the legislature had the same intention in other, related parts, unless a different intention clearly appears. State v. Sawyer, 104 S.C. 342, 88 S.C. 894 (1916). Moreover, a related but independent rule of construction is the presumption that the legislature was familiar with prior legislation dealing with the same subject when it passes a related law. Bell v. South Carolina State Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944). Most significant here, where the same word is used more than once in the statutes relating to a subject, it is presumed to have the same meaning throughout. Busby v. State Farm Mutual Ins. Co., 280 S.C. 330, 312 S.E.2d 716 (S.C.App. 1984).

Section 42-3-220 is a legislative provision that is in pari-materia with § 42-9-260 and must be considered in construing § 42-9-260. Section 42-3-220 of the South Carolina Workers' Compensation Law provides:

The Commission may, by civil action brought in its own name, enforce the collection of any fines or penalties provided by this Title and such fines and penalties shall be used for the purpose of paying salaries and expenses of the Commission.

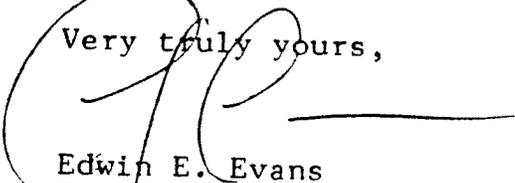
Applying the well recognized rules of statutory construction identified above, we cannot assume that the General Assembly used the term "penalty" in § 42-9-260 without being fully cognizant that any penalty provided by the Workers' Compensation Law is distributed in accordance with § 42-3-220. The provisions are clearly in pari-materia with each other and § 42-3-220 expressly provides for the disposition of penalties assessed pursuant to the Workers' Compensation Law to be "used for the purpose of paying salaries and expenses of the Commission." Since § 42-9-260 does not contain any language in conflict with the disposition provision in § 42-3-220 we must assume that the General Assembly intended for the disposition of the penalty provided in § 42-9-260 to be in accordance with this general direction.²

² Our conclusion with regard to the disposition of penalties in § 42-9-260 does not dictate a similar result with regard to § 42-9-90. The legislative history, as well as the administrative and judicial interpretations of § 42-9-90 clearly support the conclusion that a delinquent employer is liable to the employee for all compensation that is due plus an additional 10% of the due compensation. See, Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E.2d 837 (1960); Patterson v. Commercialores, Inc., S.C.Sup.Ct. Op.No. 17833 (filed September 7, 1961) vacated October 11, 1961 [although the vacated opinion has no precedential value, it does recognize the Commission's administrative interpretation of § 42-9-90.] I note in this regard that § 42-9-90 does not characterize the additional 10% liability as a "penalty" as contrasted to § 42-9-260.

Mr. Michael Grant LeFever
Page 4
April 22, 1987

If we can be of further assistance, please call upon us.

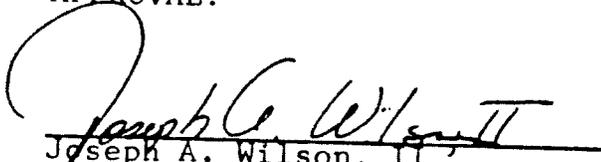
Very truly yours,



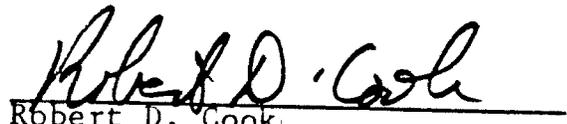
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