

1983 WL 181756 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 17, 1983

***1 Re: Recovery of Overpaid Wages to State Employee**

Mr. V. C. Traywick, Jr.
Assistant Comptroller General
Office of the Comptroller General
P. O. Box 11228
Columbia, South Carolina 29211

Dear Mr. Traywick:

You have requested an opinion from this office as to whether the State can recover for overpayment to its employees. Generally, compensation paid to a public officer which is not authorized, or which is in excess of the compensation authorized by law, may be recovered by the proper government body notwithstanding the fact that the payment was made under a mistake of law or fact and without fraud. 67 C.J.S., Officers, § 242.

While I could find no South Carolina cases on point, evidently a similar situation arose in this state in 1947. In that year, the General Assembly passed a Deficiency Appropriation Act which increased the compensation or expense money in 1947 for members of the General Assembly in a manner not permitted under the Constitution. The Supreme Court, in [Scroggie v. Bates](#), 213 S.C. 141, 48 S.E.2d 634 (1948), struck down that Act as unconstitutional. A number of legislators voluntarily refunded the extra \$700.00 which they had drawn, but apparently some members had not. In a public statement issued by Attorney General John M. Daniel and found in 1948 Op. Atty. Gen. 168, the Attorney General indicates that legal action would be brought against those not voluntarily refunding the extra pay. There is also authority from other jurisdictions for legal actions to recover overpayment to State officials or employees. See, e.g., [State v. MacDougall](#), 139 Ga. App. 815, 229 S.E.2d 667 (1976), aff'd., 238 Ga. 406, 233 S.W.2d 378 (1977). Therefore, it is my opinion that an employee can be required to refund overpayment made in prior years.

As to the actions which the agency may take to collect the overpayments, obviously the agency would be entitled to file a legal action to recover those monies. Short of legal action, the employee and the employer could reach an agreement as to the method of repayment. There is no garnishment in South Carolina, and the overpayment cannot be deducted from the employee's pay without his express permission. If you should have any further questions with regard to this matter, please advise.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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