

1983 WL 181882 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 12, 1983

*1 Honorable Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested that this office advise you as to whether the Department of Education may recover Education Finance Act [[§§ 59-20-10, et seq. of the Code of Laws of South Carolina](#), 1976] funds erroneously paid to a school district. If the Department has that authority, you also want to know whether it can recover the money by withholding it from current and future allocations to the district.

According to the information that you have provided, the excess payment resulted from the district's submitting an erroneously inflated pupil count in the 1980-81 school year which was used in computing that district's share of Finance Act funds. [See](#), Section 59-20-40(1). This error was reflected in the 1981-82 and 1982-83 school years because a component of their base was the 1980-81 funding level.

Clearly, excess payments made this school year can be recovered this year. Section 59-20-40(1)(a) states that '[e]nd-of-year adjustments in State funds shall be made based on the one hundred thirty-five day student average daily membership in each classification.' Therefore, corrections in 1982-83 funding can be made this year based upon correct pupil attendance figures, however, this provision does not expressly address corrections in funding for prior years.

General law indicates that public agencies may recover public funds paid under mistake of fact to another public agency. 63 AM.JUR.2d [Public Funds](#) § 7; 68 AM.JUR.2d [Restitution and Implied Contracts](#) §§ 119, 128; [63 A.L.R. 1346](#). The Education Finance Act clearly indicates that its funds are subject to this rule. The law states that one of its purposes is '[t]o ensure that tax dollars spent in public schools are utilized effectively' Section 59-20-30. It sets forth formulas for determining the level of funding and strict auditing requirements. [See](#), Sections 59-20-40 and 59-20-60(2), (4)(b) and (f), and (5); [see also](#), Act 466 § 28, Acts and Joint Resolutions of South Carolina, 1982, p. 2935. In particular, it states that waivers of reporting practices 'shall not be utilized to avoid full accountability and implementation of this [law].' Section 59-20-60(5)(f). These requirements would serve little purpose if erroneously inflated payments to school districts could not be recovered. Therefore, statutory and common law authority clearly supports the Department of Education's right to recover funds erroneously allocated due to mistake of fact.

If necessary, the Department of Education should be allowed to recover these funds either by bringing an action against the district or by withholding the amount of the overpayment from funds in its custody. The power to withhold appears to exist at common law. In finding that the United States had the right to apply money due an officer to debts he owed to this government, [Gratiot v. United States](#), 40 U.S. (15 Pet.) 336, 10 L.Ed. 759, 771 (1841) stated that '[i]t is but the exercise of the common right, which belongs to every creditor, to apply the unappropriated moneys of his debtors, in his hands, in extinguishment of the debts due to him.' [See](#), [Wilson Clinic & Hospital, Inc. v. Blue Cross of South Carolina](#), 494 F.2d 50 (4th Cir. 1974). Withholding of Finance Act funds, in particular, would be consistent with the strict auditing provisions noted above and with the requirements for reduction in State funding for districts not meeting the requirements for local funding (§§ 59-20-40(1)(F) and 3(b)).

*2 The Department of Education does appear to have the authority to withhold or otherwise recover excess State funds paid to a school district under the Finance Act. If we may be of further assistance, please contact us.

Very truly yours,

J. Emory Smith, Jr.
Assistant Attorney General

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