

1980 WL 120640 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 29, 1980

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

Dear Dr. Williams:

You recently requested an opinion from this Office concerning erroneous payments in teacher salaries. Specifically, you have asked whether, absent specific legislation, the State Department of Education or the local school district has any obligation to adjust erroneous payments for previous years if the erroneous payments were due to justifiable causes.

Provisions for reimbursement for errors in the payment of teachers' salaries were included in appropriations acts of the legislature from 1974-1978. Although changed somewhat from earlier provisions, the 1978 provision reads as follows:

. . . so much as may be necessary of the appropriations for the School Finance Act provided in this section may be used to correct erroneous payments of the previous year for teachers' salaries, nonteaching principals, supervisors and special teachers, and school district operational aid which were due to justifiable causes. Act 644 § 31, Acts and Joint Resolutions of South Carolina (1978), p. 1978.

In 1979, the proviso was entirely omitted from the Appropriations Act.

No other statutory provisions appear to permit the direct use of appropriations to correct errors in salary payments for previous years. [Section 2-7-75 of the Code of Laws of South Carolina \(1976\)](#), as amended, provides, in part, as follows:

All state funds appropriated shall be used . . . for the operation of state agencies and institutions for the fiscal year for which they are appropriated or made available for use.

This statute requires that the funds be used for the fiscal year for which they are appropriated and indicates that they may not be used for previous years' operations. Thus, the State Department of Education may not use its current appropriations to correct errors in the payment of teachers' salaries for previous years. In order to make these payments, it would need legislative authorization.

This conclusion is also consistent with the Education Finance Act's placement of the responsibility for the payment of teachers salaries on the school districts rather than the Department of Education. [See § 59-20-50 of the Code](#), as amended. The state's share of the money for these salaries comes from foundation program funds which the legislature provides to the district on a per pupil basis. [See § 59-29-40](#).

On the district level, teachers' contracts are made with the individual school boards. [See § 59-19-90\(2\) of the Code](#), as amended, and R43-203 of the Rules and Regulations of the Department of Education. Depending upon the terms of the contract and the nature of the error, a district may have a contractual obligation to pay a teacher the amount necessary to correct the errors in previous payments to him or her.¹ Whether payment of any amount owed the teacher could be readily made would be dependent upon the school district's budgetary procedures. [See § 59-69-210, et seq.](#), of the Code, Claims Against School Funds.

*2 In conclusion, the Department of Education cannot use any current appropriations to reimburse a teacher for justifiable errors in connection with her salary; however, depending upon the terms of the teacher's contract and/or the nature of the error, a school district may be responsible for reimbursing a teacher for these errors.

If I can be of further assistance, please do not hesitate to contact me.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

Footnotes

- 1 Subject to its phasing in provisions, the Education Finance Act mandates that school districts pay each certified teacher an annual salary at least equal to the salary stated in the statewide minimum salary schedule for the person's experience and class. §§ 59-20-50(4)(a) and 59-20-50(4)(c) of the Code as amended. This provision would seem to require a district to pay a teacher in a given year only what her certification of record for that year requires. It would not seem to require correction of pay if, in a subsequent year, that certification is found to be erroneous; however, this statute has not been construed by the courts of this state and could be subject to a differing interpretation by them.

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