

1975 WL 29759 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 28, 1975

\*1 Honorable Edgar L. McGowan  
Commissioner  
Department of Labor  
P. O. Box 11329  
Columbia, South Carolina 29211

Dear Mr. McGowan:

This is in response to your letter of February 5, 1975, requesting an opinion on how the Department of Labor may collect on bad checks received from employers as payment of penalties under the Occupational Safety and Health Rules and Regulations. I apologize for not answering sooner.

Actually, I think you have three alternative remedies. First, you may institute a civil suit based on Article Three of the UCC, which deals with Commercial Paper. S. C. Code §§ 10-3-101 et seq. (1962). Secondly, I believe that the Bad Check Law, S. C. Code §§ 176-178 (1974 Supp.) is applicable to this situation, and that the Department could institute a criminal action, as provided in these sections, against the drawer of the check. Finally, I think that the Act which authorizes you to make Health and Safety Rules and Regulations affords a remedy. S. C. Code §§ 261 et seq. (1974 Supp.).

Section 274 specifically provides that where a penalty is not paid within the thirty days, the Attorney General shall bring an action for the amount of the penalty against the assessed employer. If an employer's check is dishonored and returned, the penalty clearly 'is not paid' and the statutory remedy of § 274 would be available.

If you have further questions on these matters, please contact Mr. Victor S. Evans, Deputy Attorney General, who referred this matter to me.

Sincerely,

Jim Bradford  
Law Clerk

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