

1974 WL 27160 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 3, 1974

***1 RE: Salary of Mr. John Blanton O'Neal, Jr.**

Thomas O. Lawton, Jr., Esquire
Allendale County Attorney
Post Office Box 646
Allendale, South Carolina 29810

Dear Mr. Lawton:

Your letter of August 22, 1974, has been referred to me for answer. You questioned whether or not Magistrate O'Neal can regally be paid for back wages from April 29, 1974 through July 17, 1974.

On April 29, 1974, Mr. O'Neal resigned as magistrate pending the outcome of charges against him for the murder of Wallace Youmans. On July 15, 1974, after the trial, all charges against him were dismissed, whereupon, on July 18, 1974, Governor John C. West reinstated Mr. O'Neal as magistrate for the remainder of the term to which he was originally appointed. Under the Governor's Order, the reinstatement was effective the date of the Governor's Executive Order, July 18, 1974.

There is no provision in the Code of Laws of South Carolina, 1962, as amended, providing for payment of back wages under the above circumstances. During the time Mr. O'Neal was not acting as magistrate, someone else had performed magisterial functions and had to be paid accordingly. Furthermore, Mr. O'Neal resigned his post at his own free will and under no compulsion from the State. Therefore, it is the opinion of this office that since there are no statutory provisions providing for payment of wages under the above circumstances and since Mr. O'Neal's resignation was voluntary, he is not legally entitled to back wages from the period of April 29, 1974 through July 17, 1974.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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