

1978 WL 35129 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 22, 1978

***1 Re: DSS—Provider Installment Payment Agreements—No Statute Authorizes a State Agency to Pay Interest**

Honorable Grady L. Patterson, Jr.

State Treasurer

P. O. Drawer 11778

Columbia, South Carolina 29211

Dear Mr. Patterson:

Reference is made to correspondence and conferences, relative to installment payment provisions contained in the DSS/ Provider contracts. No statute has been called to our attention which provides for payment of interest by DSS or by any State agency with respect to unpaid balances of disallowances covered by an installment payment schedule. In the absence of statute expressly providing for payment of interest by DSS or by governmental agencies who are providers, we do not believe that such interest on unpaid installments can be properly paid. See [S. C. Highway Dept. v. So. Railway Co.](#), 239 S.C. 1, 121 S.E.2d 236 (1961). See also [S. C. Highway Dept. v. Schrimpf](#), 242 S.C. 357, 131 S.E.2d 44 (1963); [S. C. Highway Dept. v. Nancy Kimmery](#), Memorandum Opinion No. 77-10 of the S. C. Supreme Court, filed February 3, 1977. There is no statutory authorization for DSS to pay interest on disallowed payments which are ultimately determined to belong to the provider, whether such provider is private or governmental. Moreover, where the provider is a State agency, there is no provision for such provider to pay interest to DSS on any unpaid balance found owing to DSS. On the other hand, there is no statutory prohibition against the State of South Carolina, through DSS, contracting with a private provider whereby the private provider agrees to pay interest to DSS on any disallowances found owing to DSS.

In summary, there is no statutory provision authorizing payment of interest on unpaid balances covered by installment payment agreements, where the interest would be paid by DSS or a governmental entity of the State of South Carolina. Neither DSS nor the State governmental entity can legally pay interest without specific legislative authority. If, on the other hand, the obligation is one owed by a private provider to DSS, the Department of Social Services can receive interest on such obligation pursuant to the installment payment interest provision furnished to this Office for review.

Yours very truly,

Victor S. Evans

Deputy Attorney General

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