

921
Chicago 11, Illinois

MAY 27 1953

The Board

L 53-208

The Associate General Counsel

Recovery of Erroneous Payments

Pursuant to your request, I have examined the provision in the Railroad Retirement Act on recovery of erroneous payments, section 9. I am of the opinion that in any case where recovery of overpayment is to be made from an annuity the recovery may be initiated, as indicated below, by payment of the amount that would be payable if the annuity were to be paid on an actuarial basis, without first securing consent of the annuitant, and pending final decision on the method of recovery.

Subsection (b) of section 9 provides that: "Adjustments under this section may be made either by deductions from subsequent payments, or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities [or other] benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value." The adjustments referred to as "under this section" are, of course, those qualified in

The Board

subsection (a) of section 9, that is, "adjustments in subsequent payments to which the individual, who has been erroneously paid, is entitled under this Act or any other Act administered by the Board". And it is plain from the explicit provision that the adjustments "may, except as otherwise provided in this section, be made under regulations prescribed by the Board" that the Board is to have exclusive discretion, with or without agreement on the part of the payee, to determine which of the alternative methods of recovery from subsequent payments authorized in subsection (b) is to be used. This conclusion is, of course, in full accord with, and a special expression of, the general policy of the Act for the Board to administer it and to exercise such judgment and discretion as would appropriately effect this purpose (section 10 (particularly section 10(a) prescribing the Board's special experience and interest qualifications)). Consultation with the payee as to the method best adapted to making recovery, and consideration by the Board of the payee's circumstances and wishes, are not at all precluded by the provision, so long as the Board protects the interest of the Government in exercising the authority granted by the recovery provision.

Consequently, in my opinion, the Board could, in every case where an overpayment is to be recovered from an annuity payable for life, make payment immediately in monthly amounts equal to those which would be payable had the Board determined to effect recovery by the actuarial method, pending receipt of information from the annuitant

The Board

as to which of the various authorized, and, from the Board's point of view, equally satisfactory, methods of recovery would best fit his circumstances and be most acceptable to him. By this procedure the Board would obtain all the protection against loss of Government funds that the provision contemplates and at the same time, by not having made a final determination to recover by the actuarial method (see last sentence of section 9(b)), it would be free to accommodate the recovery process to accord with the annuitant's needs to the greatest practicable extent.

David B. Schreiber
Associate General Counsel

CC: Mrs. Linkins
Mr. McKenna

PMJohnson:em

David B. Schuler

Associate General Counsel 4-27-53

APPROVING OPINION OF THE ASSOCIATE GENERAL COUNSEL, DATED MAY 27, 1953,
WITH REGARD TO RECOVERY OF ERRONEOUS PAYMENTS

On the advice of the Associate General Counsel that it is legal for the Board to institute recovery of erroneous overpayments in the manner set forth in his opinion of May 27, 1953 (L-53-208), the Board hereby instructs the Bureau of Retirement Claims to follow the procedure outlined in that memorandum.