

SOCIAL SECURITY ACT: Interpretation of money payment in
the Federal Social Security Law, Title
1, Section 6

January 21, 1938.

Honorable George I. Haworth,
Administrator,
Social Security Commission,
Jefferson City, Missouri.



Dear Sir:

This will acknowledge receipt of your request
for an opinion from this department under date of January 6,
1938, which reads as follows:

"Under the Federal Social Security Law
(Public #271-74th Congress, Title 1,
Sec. 6) it is provided that 'old age
assistance means money payments to aged
individuals.'

"We would appreciate receiving an opinion
from you as to when a money payment is
made, in other words, does the mailing
of a check to a recipient constitute
money payment, or is it necessary for the
recipient to receive, indorse and cash
such check before it can be construed as
money payment?"

"The above question has arisen in connec-
tion with the cashing of assistance checks
of deceased recipient's by their legal
representative. We are advised that
Federal participation in payment to legal
representatives will be allowed on the
basis of the date that the money payment
was made."

It is settled law in this state that in the absence of an agreement to accept a check in payment of a debt or obligation, a check is not considered payment until said check is paid.

48 C. J., Sec. 50, page 617, in part, reads as follows:

"The delivery to, or acceptance by, the creditor of his debtor's check, although for convenience often treated as the passage of money, is not payment, even though the check is certified before delivery, in the absence of any agreement or consent to receive it as payment, or any laches or want of diligence on the part of the creditor, or the negotiation of the check by him."

There are numerous cases supporting this principle of law.

In *Groomer v. McMillan*, 143 Mo. App. 612, 615, the court said:

"In our opinion this evidence did not show a payment. The law is that the payment, to be effective in avoidance of the Statute of Frauds, must be an absolute payment. But it need not be in money. The buyer's check for the money will suffice if it is received by the seller and agreed that it is an absolute payment; and this must be clearly established. For 'Nothing is better settled than that a check is not payment, but is only so when the cash is received on it. There is no presumption that a creditor takes a check in payment arising from the mere fact that he accepts it from his debtor. The presumption is just the contrary.'"

In Words and Phrases we find only one decision defining "money payment." That is *Wing v. Credit Guide Co.*, 164 N. W. 627, 181 Iowa, 370, wherein the court said:

"This is not a case coming under the ban of the statute which prohibits the issue of stock for other than a money payment of the subscription, except upon permission given by the state executive council. The money had been paid to or for the corporation, though the stock had not yet been formally issued, and there is nothing in the language or intentment of the statute which forbids recognition by the corporation of payments and expenditures so made in its behalf, or the issuance of its stock to the amount thereof."

There are several principles of law relative to the question found in Corpus Juris. In 48 C. J., Sec. 218, p. 703, we find the following:

"Ordinarily the delivery of the check of the debtor or of a third person will not be presumed to have been accepted as absolute payment of the debt, but the presumption is that it was accepted merely as conditional payment or as collateral security, so that the debt is not discharged until the check is paid to the creditor or some person authorized by him to receive payment."

In 48 C. J., Sec. 38, page 793, we find the following:

"The receipt of a check by a pensioner which he has only indorsed, but which has not been transferred by him in his lifetime, is not a payment, but is only one step in the process of payment."

In First Nat. Bank of Belle Plaine v. McConnell, 103 Minn. 340, 114 N. W. 1129, 14 L. R. A. 616, 1. c. 619, the court said:

"It is well settled that the giving of a check by a debtor for the amount of his indebtedness to the payee is not, in the absence of express or implied agreement

to that effect, a discharge or payment of the debt. The presumption, in the absence of evidence to the contrary, is that the check was accepted conditionally, and the debt is not discharged until the check is paid."

Likewise, in *Tanner v. Turner*, 64 Iowa 690, 691, 21 N. W. 140, the court said:

" * * * the issuance of the check was evidence that the claim was settled. By the issuance the process of payment was initiated, but not consummated. The check was designed to be negotiated to banks or others who would cash the same. The claim was so far settled that a transfer of the check could not be deemed prohibited by the statute."

In Vol. 19 of Opinions of Attorneys General of the United States, page 1, l. c. 2, 3 and 4, it was held that receipt by a pensioner of a check for the amount due him on his pension, which was indorsed but not transferred by him in his life-time, is not payment. The opinion, in part, reads as follows:

"The question is thus reduced to, what is a payment to a pensioner in his life-time? In the absence of special contract the presumption is that the payment of an obligation shall be made in money. This presumption applies to a pensioner as well as to any one else. Till he gets his money or that which in law is its equivalent, he is not paid nor is the Government discharged. If he receives a check but never transfers it nor gets the check cashed he has not received his money; for a 'banker's check is not money' (Chitty on Bills, 399). If he receives a check and payment is refused he has no right of action against the bank. 'The holder of a bank check can not sue the bank for refusing payment in the absence of proof that it was accepted by the bank or charged against the drawer.'

"The fact that the check was properly drawn on a national bank (a public depository) by an officer of the Government in payment of a public creditor does not alter this general rule, (Bank of Republic v. Millard, 10 Wall, 152). 'The payee of a check before it is accepted by the drawee can not maintain an action upon it against the latter, as there is no privity of contract between them.' So held, where a check of the Treasurer of the United States upon a national bank duly designated as a depository of the public money, having been paid upon an unauthorized indorsement of the name of the payee, suit to recover the amount of the check was brought by its true owner against the bank (First National Bank v. Whitman, 94 U. S., 343). A check, then, until presented, accepted, or marked good by the drawee, is only a personal obligation of the drawer. 'When the United States by its unauthorized officer become a party to negotiable paper they have all the rights and incur all the responsibility of individuals who are parties to such instruments. We know of no difference except that the United States can not be sued.' (United States v. Bank of Metropolis, 15 Peters, 392; and United States v. State Bank, 96 U. S., 30.)

"The United States, then, stands upon the same plane as others who issue negotiable paper, except that the United States can not be sued. The general rule is, if a debtor give his creditor his own promissory note or obligation of no higher order than the original debt, the debt is not thereby paid nor the debtor discharged (Peter v. Beverly, 10 Peters, 567; James v. Hackly, 16 Johns, 277). It is stated by Kent, Chief-Justice, in the People v. Howell (4 Johns, 304), 'unless a check is paid it is no payment.'

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"In the case of Burnet v. Smith (10 Foster, 264), it is ruled: 'Until cashed, it (a check) is no payment of a pre-existing debt any more than a promissory note is payment of such debt without an agreement to receive it as such.'

* * * * *

"It is therefore concluded that the receipt of a check by a pensioner, which he has only indorsed but which has not been transferred by him in his life-time, is not a payment but is only one step in the process of payment."

In view of the above and foregoing, it is the opinion of this department that the words "money payment" as used in the Federal Social Security Law (Public #271-74th Congress, Title 1, Sec. 6), providing Federal participation, should not be construed to mean the mailing of the State check to the pensioner or the receipt of said check by the pensioner, but the payment of said check.

Yours very truly,

AUBREY R. HAMMETT, Jr.,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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