

The State of South Carolina



Office of the Attorney General

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October 9, 1987

The Honorable Thomas A. Limehouse
Member, House of Representatives
Post Office Drawer 2005
Summerville, South Carolina 29484

Dear Representative Limehouse:

You have requested an opinion as to whether the optional retirement program for publicly-supported four-year and postgraduate institutions of higher education, created by Act No. 42 of 1987, applies to persons within the coverage group who were under employment prior to July 1, 1987.

This question has arisen because Section 9-17-30 states that "[e]ligible employees employed on or after July 1, 1987, shall elect to join either the South Carolina Retirement System or to participate in the optional retirement program under this chapter...." [Emphasis added]. The phrase "employed on or after" is ambiguous on its face, because read by itself it could apply either to all current employees or only to those hired on or after July 1, 1987.

Despite this facial ambiguity, this Office is of the opinion that the statute as a whole clearly indicates an intent to cover only persons hired on or after July 1, 1987. This conclusion is supported by the provisions of the statute discussed below.

Section 9-17-30 provides that the election of the employees' retirement program "is effective on the date of employment." No mention is made of any possible relation back of an election to join the optional retirement program. Similarly, the same section provides that in an absence of an election by the deadline date set forth in that section, the employee is "considered to have elected membership in the South Carolina Retirement System." No mention is made of the situation in which an employee's membership in the Retirement System would simply continue.

The Honorable Thomas A. Limehouse

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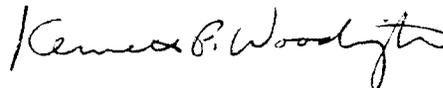
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Even more significant is the absence in Act No. 42 of 1987 of any provision for withdrawal from the South Carolina Retirement System in order to participate in the optional retirement program. Under the statutes creating the Retirement Systems, the provisions for withdrawal of contributions permit such withdrawals only upon cessation of employment, death of the employee, or retirement of the employee.

Finally, the above interpretation is the one which the Retirement System has adopted. As the Supreme Court of South Carolina has held in many cases, the construction of a statute by the agency charged with its administration should not be overruled absent compelling reasons. See, e.g., Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987). As already noted, this administrative construction finds ample support in the language of the statute itself.

Accordingly, in the absence of any provision for what would happen to the retirement funds of pre-July 1, 1987 employees electing to participate in the optional retirement program, and reading the statute as a whole, is the opinion of this Office that Act 42 of 1987 was intended to apply only to eligible employees hired on or after July 1, 1987.

Sincerely yours,

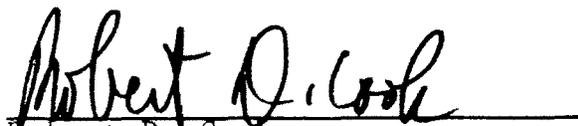


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