

The State of South Carolina



Office of the Attorney General

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October 7, 1987

Mr. Purvis W. Collins
Director, South Carolina Retirement System
Post Office Box 11960
Columbia, South Carolina 29211

Dear Mr. Collins:

You have requested an opinion as to the proper interpretation of § 9-1-60, 1976 Code of Laws, which section was added by Section 18, Part II of the 1987-88 State Appropriations Act. Section 9-1-60 provides as follows:

Section 9-1-60. (A) The System may develop and implement a program for the administration of a flexible benefits or 'cafeteria' plan as defined by Section 125 of the Internal Revenue Code of 1986 for all employees covered by the health and dental insurance plan administered by the System. The plan may not decrease contributions paid to or benefits paid by the System.

The South Carolina Department of Highways and Public Transportation is herewith authorized to continue its independent cafeteria or flexible benefits pilot plan and to modify and implement said plan to accomplish maximum available benefits under Internal Revenue Section 125.

(B) Political subdivisions may develop and implement a program for the administration of a flexible benefits or 'cafeteria' plan as defined by Section 125 of the Internal Revenue Code of 1986 for their employees. The plan may not decrease contributions paid to or benefits paid by the System.

Subsection (A) provides that the Retirement System may develop and implement a "cafeteria" plan for all employees covered by the health and dental insurance plan administered by the system. That subsection also authorizes the Department of Highways and Public Transportation to continue with its independent cafeteria benefits pilot plan. Subsection (B) provides that political subdivisions may develop and implement cafeteria plans for their employees.

For a number of years, appropriations for health insurance and dental insurance for both state employees and school district employees have been made in the annual Appropriations Act. See, e.g., 1987-88 General Appropriations Act, Section 16.13. 1983-84 General Appropriations Act, Act No. 151 of 1983, Section 14, 63 Stat. at 574. This health insurance package for state and school district employees has been administered through either the State Personnel Division or the State Retirement System, the Retirement System having assumed responsibility for the program several years ago.

Section 9-1-60(A) created two classes of employees, not counting the Highway Department pilot cafeteria plan already then in existence. The two classes of employees are those covered by the health and dental insurance plan administered by the System, i.e., state and school district employees, and employees of political subdivisions. A question has arisen as to whether school districts may set up plans separate from the one set up by the Retirement System. This question has arisen because in a general sense, school districts are considered political subdivisions. See, e.g., Brooks v. One Motor Bus, 190 S.C. 379, 3S.E.2d 42 (1939); Patrick v. Maybank, 198 S.C. 262, 17 S.E.2d 530 (1941).

Nevertheless, it is apparent that the intent of Section 9-1-60 was to divide all public employees into two classes, one class consisting of state and school district employees and the other class consisting of employees of all other political subdivisions. While a reading of Subsection (B) in isolation would lead to the conclusion that school districts, as political subdivisions, may establish cafeteria plans, a reading of the statute as a whole indicates a clear intent that the only cafeteria plan in which school districts may participate is the one offered by the Retirement System.

This conclusion is bolstered by the fact that a cafeteria plan, which is a creature of Section 125 of the Internal Revenue Code of 1986, is essentially a plan by which taxable income may be reduced by having certain fringe benefits excluded from income at the employee's option. In a large number of cases, the fringe benefit so selected for exclusion by the employee will be the health insurance plan. Since these are offered to the school district employees through the State, it follows that the intent would have been to have such employee selections made pursuant to a plan created and administered by the State through the Retirement System.

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For the above reasons, it is the opinion of this Office that school districts may not create cafeteria plans separate from the one created and administered by the Retirement System.

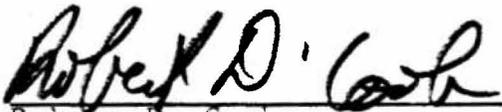
Sincerely yours,



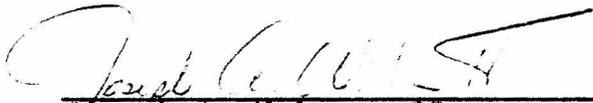
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