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February 6, 1986

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

Dear Mr. Collins:

You have requested an opinion of this Office whether a member who is eligible to establish six years' military service may purchase credit for less than the full six years. This eligibility to establish the full six years permitted by the statute comes from the member's having at least twice that number of years of state service.

Section 9-1-1140 provides for the creditability of military service. When various phrases not relevant to present issue are eliminated, it provides as follows:

Any member ... shall receive additional creditable service for the period of his military service ... provided that he shall pay to the System, by a single payment ..., all payments ... he would have been required to make for the period to be so credited... . No member shall receive credit for more than six years of military service. (emphasis added)

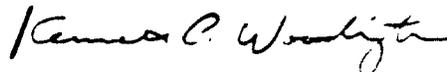
Beginning in 1972, when this statute was first enacted, the Retirement System has required anyone who can establish six years of military service (i.e., who has 12 years or more of state service) to establish that many years. It appears that this is a reasonable construction, based on the statute's reference to "the period of his military service," as opposed to a phrase which could denote something less than "the" period. (An example of such a phrase might be "such period of military service as the member may desire to establish.")

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The Supreme Court of South Carolina has often held that "[t]he construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons." Faile v. S.C. Employment Security Commission, 267 S.C. 536, 540, 230 S.E.2d 219 (1976). This rule has further been held to apply particularly where, as here, the administrative interpretation occurred contemporaneously with the enactment of the statute and where the legislature has for a number of years acquiesced in it.

For these reasons, it is the opinion of this Office that the interpretation given § 9-1-1140 by the Retirement System is entitled to enforcement, and that one who is eligible to establish six years of military service credit must establish all such service, up to six years, if any such credit is to be established.

Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

KPW:em

cc: Mr. Edward C. Faria

REVIEWED AND APPROVED BY:



ROBERT D. COOK

Executive Assistant for Opinions