

1981 WL 157852 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 7, 1981

*1 Mr. Purvis W. Collins
Chairman
Deferred Compensation Commission
Post Office Box 11960
Capitol Station
Columbia, South Carolina 29211

Dear Mr. Collins:

You have asked the opinion of this office on whether public defenders and assistant public defenders [both hereinafter referred to as public defenders] may participate in the State Deferred Compensation Program [hereinafter Program].

The purpose of the Program, which is established by [Sections 8-23-10, et seq., Code of Laws of South Carolina \[Cum. Supp. 1980\]](#), is to enable the employees of the State, its agencies, boards, commissions, institutions and political subdivisions to participate in voluntary deferred compensation plans. For purposes of the Program, an employee is defined by Section 8-23-60 as a person providing services for the State or any political subdivision for which compensation is paid on a regular basis.

Public defenders and the county public defender corporations by which they are employed are provided for and governed by [Sections 17-3-10 to 17-3-110 of the 1976 Code](#), as amended, and the Rules on the Defense of Indigents in Volume 22 of the Code, which were promulgated by the Supreme Court. These statutes and rules require county public defender corporations and public defenders to provide legal representation to indigent criminal defendants after appropriate findings and orders are made by the circuit courts. This public function is mandated of the states, counties and other political subdivisions by the United States Constitution. [Argersinger v. Hamlin, 407 U.S. 25 \(1972\)](#).

County public defender corporations receive an annual appropriation from the general fund of the State that is disbursed by the Judicial Department. [Section 17-3-70, Code](#), as amended. Public defender corporations also are funded by the counties in which they operate. [Section 4-9-30\(5\), Code](#), as amended. Public defenders, thus, are paid their compensation from these public funds, and as I understand it, this compensation is paid to them on a regular basis, usually monthly.

Although they are described in Section 17-3-60 as eleemosynary corporations, public defender corporations are more in the nature of public corporations established on a county basis. This conclusion is based on the public functions performed by them at the county level, their public funding and the extent to which they are governed by statute. The South Carolina Supreme Court has recognized that public corporations are tantamount to governmental agencies or instrumentalities. [Creech v. S.C. Public Service Authority, 200 S.C. 127 \(1942\)](#); [York County Fair Association v. S.C. Tax Commission, 249 S.C. 337 \(1967\)](#). For these reasons, it is accurate to conclude that public defenders provide services for their respective counties through the county public corporations, which themselves function in the nature of instrumentalities of the respective counties.

It should be noted that a prior opinion of this office concluded that public defender corporations are employers, as defined by Section 9-1-10(5), for purposes of the State Retirement System. Opinion to Purvis W. Collins, Director, South Carolina Retirement System, January 28, 1980.

*2 Based on the foregoing, it is the opinion of this Office that public defenders and assistant public defenders may participate in the South Carolina Deferred Compensation Program.

Sincerely,

James M. Holly
Assistant Attorney General

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