

1979 WL 42847 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 6, 1979

\*1 Purvis W. Collins

Director

South Carolina Retirement System

P. O. Box 11960

Columbia, South Carolina 29201

Dear Mr. Collins:

You have requested an opinion as to the eligibility of an employee to receive a refund of contributions if he-returns to covered employment within less than ninety days after he terminates in another covered position. Section 9-1-1650 provides in part 'Should a member cease to be a teacher or employee except by death or retirement, he shall be paid within six months after his demand therefor, but not less than ninety days after ceasing to be a teacher or an employee, the sum of his contributions and the accumulated regular interest thereon.'

It might perhaps be argued that one's right to receive a refund of contributions vests immediately upon his termination from the first position, and that this statute only defers the actual payment of his contributions for a period of ninety days to six months. The practice, however, has been to require at least a ninety day gap between the employee's two covered positions. There is nothing in the statute to indicate that a right to recover contributions vests at the time of termination of the time of first employment. It is therefore the opinion of this Office that the lack of a distinction in a statutes between the accrual of a right to payment and payment itself indicates a legislative intent that both the accrual of the right and the payment should occur only after ninety days has elapsed from the time of the termination of the first employment.

Sincerely yours,

Kenneth P. Woodington

Assistant Attorney General

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