

1977 S.C. Op. Atty. Gen. 167 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-215, 1977 WL 24557

Office of the Attorney General

State of South Carolina

Opinion No. 77-215

July 8, 1977

\*1 TO: Purvis W. Collins

Director

South Carolina Retirement System

QUESTION:

Does service in the Merchant Marine qualify for prior service credit under the South Carolina Retirement System, Section 9–1–1140, 1976 Code of Laws?

STATUTES, CASES AND TREATISES:

Section 9–1–1140, 1976 Code of Laws;

[5 U.S.C. Section 2101](#);

50 U.S.C. App. Sections 501, 510, 511;

[Ashbourne v. U.S.](#), 164 F.2d 767;

6 C.J.S. 555 citing [Redding v. Los Angeles](#), 81 C.A.2d 888, 185 P.2d 430;

[Webster's New World Dictionary](#).

DISCUSSION:

Section 9–1–1140 provides in part that:

Any member with two or more years of creditable service shall receive additional creditable service for the period of his military service, at the rate of one year of military service for each two years of his creditable service excluding any period of creditable military service. . . .

Resolution of the question turns on what definition is given 'military service.' Webster's New World Dictionary defines 'military' as 'characteristic of, for, fit for, or done by soldiers or the armed forces.' Clearly, the word 'military', when used in its ordinary sense, refers only to the armed services. 'Members of the merchant marine are not members of the armed services.' 6 C.J.S. 555, citing [Redding v. City of Los Angeles](#), 81 C.A.2d 888, 185 P.2d 340.

[5 U.S.C. Section 2101](#) defines 'Armed Forces' as including 'the Army, Navy, Air Force, Marine Corps, and Coast Guard.' No reference is made to the Merchant Marine at any place in this Title which deals with United States Employees of all descriptions.

The Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 501, *et seq.*, similarly makes no mention of the Merchant Marine in its provisions. The Act's purpose as set forth in Section 510 is as follows:

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend, enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation. . . .

'Persons in the military service of the United States' as used in this section are defined in Section 511 to 'include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coastguard' and certain designated officers of the Public Health Service [emphasis supplied]. A member of the Merchant Marine seeking the protection of this Act was denied protection in [Osbourne v. U.S.](#), 164 F.2d 767, because he was not 'in the military service.'

The clear implication of the above discussion is that members of the Merchant Marine are not entitled to prior service credit for 'military service' under the provisions of the South Carolina Retirement Act.

CONCLUSION:

\*2 Service in the Merchant Marine does not entitle an individual to prior service credit under Section 9-1-1140 of the South Carolina Retirement Act.

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