

1976 WL 30664 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 12, 1976

*1 The Honorable John C. Lindsay
Member
South Carolina Senate
Box 250
Bennettsville, South Carolina 29512

Dear Senator Lindsay:

You have requested my opinion on the question of whether or not an individual who is above the age of 72 years is eligible to be a member of the South Carolina Board of Social Services.

Members of the Board are elected by the General Assembly and 'receive a per diem and necessary mileage for attending meetings at the mileage rates allowed other State officials—.' Section 71-2, Code of Laws, 1962, as amended.

Section 61-103 requires that any employee in service shall be retired no later than the end of the fiscal year in which he reaches his 72nd birthday. Excepted from this requirement, however, are the following:

'Provided, however, excepting constitutional officers, this section shall not apply to appointive officers receiving per diem and/or travel allowances as total compensation.'

In my opinion, membership upon the Board of Social Services is 'appointive' as that word is used in the mandatory retirement provisions of law. It is my opinion that an elective office is one which is filled by popular election and an office filled in the manner in which members of the Board are elected is not an elective, but appointive office. 69 Attorney General's Opinions 66. Regulation of the Budget and Control Board adopted February 10, 1947 (Vol. 7, Code of Laws, 1962, p. 54 ¶10).

I am, therefore, of opinion that a member of the Board of Social Services comes with the exception to the mandatory retirement provisions of law, his compensation being limited to per diem and mileage expenses.

Very truly yours,

Daniel R. McLeod
Attorney General

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