ALAN WILSON
ATTORNEY GENERAL

October 29, 2013

The Honorable Glenn Reese
Senator, District No. 11
507 Fagan Drive
Lake Bowen
Inman, South Carolina 29349-7000

Dear Senator Reese:

Attorney General Alan Wilson has referred your letter dated September 11, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: May a law enforcement officer purchase time from the State toward his police retirement based on a request properly and timely submitted in March of 2013 when the statutes (S.C. Code Sections 9-1-1140 and 9-11-50) concerning purchasing years of service were amended and signed by the Governor in June of 2013 making the amendments retroactive to January 2 of 2013?

Law/Analysis:
It is this Office's understanding that pursuant to S.C. Code Section 9-1-210, 9-1-290, and 9-1-10(6) that the Board of Directors of the South Carolina Public Employee Benefit Authority is vested with the general administration and responsibility for the operation of the South Carolina Retirement System and may establish rules and regulations for the administration thereof.[1] The applicable code sections concerning your question are quoted below. Please note we have included both versions (the version that currently reads "effective until January 2, 2013" and the version that reads "effective starting January 2, 2013"). According to the South Carolina legislative website, some of the relevant portions of the versions of the statutes in question state:

> **SECTION 9-1-1140.** Establishing service credits by making payments into system; career highest fiscal year salary; credits during absences; employer payments; rules and regulations; credits for unused sick leave.

[1] Please note this Office issued an opinion in 2011 where we delineated that Act No. 153 of 2005 established the state Budget and Control Board as the "trustee" of the retirement system, the Retirement System Investment Commission as having the power to invest and reinvest, and the State Treasurer as the "custodian" of the assets. Op. S.C. Atty. Gen., 2011 WL 6120331 (November 16, 2011). Please also note S.C. Code Section 9-1-10(6) was amended by 2012 S.C. Act No. 278 which changed the definition of "board" from the S.C. Budget and Control Board to the Board of Directors of the S.C. Employee Benefit Authority.

< Section effective until January 2, 2013. See, also, section effective January 2, 2013. >
(A) An active member may establish service credit for any period of paid public service by making a payment to the system to be determined by the board, but not less than sixteen percent of the member's current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member's career highest fiscal year salary shall include the member's salary while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four-Year and Postgraduate Institutions of Higher Education if the member has purchased service rendered under any of these programs pursuant to subsection (F) of this section. Periods of less than a year must be prorated. A member may not establish credit for a period of public service for which the member also may receive a retirement benefit from another defined benefit retirement plan. A member may not establish service credit for public service to the extent such service purchase would violate Section 415 or any other provision of the Internal Revenue Code.
...

SECTION 9-1-1140. Establishing service credits by making payments into system; career highest fiscal year salary; credits during absences; employer payments; rules and regulations; credits for unused sick leave.

< Section effective January 2, 2013. See, also, section effective until January 2, 2013. >
(A) An active member may establish service credit for any period of paid public service by making an actuarially neutral payment to the system as determined by the actuary for the board based on the member's current age and service credit, but not less than sixteen percent of the member's current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member's career highest fiscal year salary shall include the member's salary while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four-Year and Postgraduate Institutions of Higher Education if the member has purchased service rendered under any of these programs pursuant to subsection (F) of this section. Periods of less than a year must be prorated. A member may not establish credit for a period of public service for which the member also may receive a retirement benefit from another defined benefit retirement plan. A member may not establish service credit for public service to the extent such service purchase would violate Section 415 or any other provision of the Internal Revenue Code.

...

SECTION 9-11-50. Establishing service credit by making payments into the system; reestablishment of service credits; employer payments; credit for unused sick leave; rules and regulations.

< Section effective until January 2, 2013. See, also, section effective January 2, 2013. >
(A) An active member may establish service credit for any period of paid public service by making a payment to the system to be determined by the board, but not less than sixteen percent of the member's current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. Periods of less than a year must be prorated. A member may not establish credit for a period of public service for which the member also may receive a retirement benefit from another defined benefit retirement plan. A member may not establish

> service credit for public service to the extent such service purchase would violate Section 415 or any other provision of the Internal Revenue Code.
> ...
>
> **SECTION 9-11-50.** Establishing service credit by making payments into the system; reestablishment of service credits; employer payments; credit for unused sick leave; rules and regulations.
>
> **< Section effective January 2, 2013. See, also, section effective until January 2, 2013. >** (A) An active member may establish service credit for any period of paid public service by making an actuarially neutral payment to the system to be determined by the actuary for the board, based on the member's current age and service credit, but not less than sixteen percent of the member's current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. Periods of less than a year must be prorated. A member may not establish credit for a period of public service for which the member also may receive a retirement benefit from another defined benefit retirement plan. A member may not establish service credit for public service to the extent such service purchase would violate Section 415 or any other provision of the Internal Revenue Code.

S.C. Code §§ 9-1-1140, 9-11-50 (1976 Code, as amended) (emphasis added). The 2012 amendments substituted "an actuarially neutral" for "a", inserted "actuary for the", and inserted "based on the member's current age and service credit" in subsections (A)-(F); inserted "Class One or Class Two" in subsection (M); and, made other, nonsubstantive, changes according to Westlaw's notes. 2012 S.C. Act No. 278.

As this Office has previously stated, the same general rules of statutory construction and interpretation apply to rules and regulations of State administrative agencies. Those rules include a predisposition to uphold the validity of a regulation, ascertainment of the legislative intent and purpose, harmonization of provisions in the same sections, interpretation according to the natural and plain meaning of the words, partiality of more specific provisions over more general ones, liberal construction of remedial provisions while giving a more strict construction for exemptions or conduct for which sanctions are imposed, and other such customs of statutory interpretation. Ops. S.C. Atty. Gen., 2011 WL 3346431 (July 22, 2011); 2006 WL 981700 (March 17, 2006); 1989 WL 406124 (March 24, 1989). Additionally, the construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons. Emerson Elec. Co. v. Wasson, 287 S.C. 394, 397, 339 S.E.2d 118, 120 (1986). "Where the administrative interpretation has been formally promulgated as an interpretative regulation or has been consistently followed, this required deference is highlighted and the administrative interpretation is entitled to great weight." Op. S.C. Atty. Gen., 1990 WL 482427 (May 1, 1990) (citing Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (1983)). This Office has previously opined:

> An administrative body cannot make a rule which would materially alter or add to the law, but to be valid, a rule must only implement the law. Banks v. Batesburg Hauling Co., 202 S.C. 273, 24 S.E.2d 496 (1943). On the other hand, administrative agencies may be authorized to fill up details by prescribing rules and regulations for complete

> operation and enforcement of law within its expressed general purpose. Young v. S.C. Dept. of Highways and Public Transp., 287 S.C. 108, 336 S.E.2d 879 (S.C. App. 1985). Thus, an administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation. Hunter and Welden Co., Inc. v. S.C. State Licensing Bd. for Contractors, 272 S.C. 211, 251 S.E.2d 186 (1978). Moreover, an agency's regulations are presumed valid until challenged. Op. Atty. Gen., November 27, 1995, referencing U.S.C. v. Batson, 271 S.C. 242, 246 S.E.2d 882 (1978) (Littlejohn, J. concurring). And this Office possesses 'no authority to declare either a statute or administrative regulation invalid. At most, we may simply comment upon and point to any constitutional or legal problems which may be encountered as a result of the enforcement of such laws.' Id.

Op. S.C. Atty. Gen., 1996 WL 679478 (October 15, 1996).[2] As this Office has previously opined, "§ 1-23-380 of the Administrative Procedures Act outlines the standards for judicial review of actions by regulating agencies." Op. S.C. Atty. Gen., 2012 WL 5705583 (November 6, 2012) (citing S.C. Dept. of LLR v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (1998)). Nevertheless, the South Carolina Supreme Court stated in a 2005 opinion:

> After exhaustively reviewing this voluminous record, I come to the conclusion that the courts should be reticent to intervene in the management of the South Carolina Retirement System. Absent evidence of a gross abuse of discretion, the management and administration of the South Carolina Retirement System must remain with those upon whom the law imposes the responsibility.

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[2] Please note, the S.C. Retirement System gets its authority from various sources, including the S.C. Constitution, which says:

> The governing body of any retirement or pension system in this State funded in whole or in part by public funds shall not pay any increased benefits to members or beneficiaries of such system above the benefit levels in effect on January 1, 1979, unless such governing body shall first determine that funding for such increase on a sound actuarial basis has been provided or is concurrently provided.
>
> The General Assembly shall annually appropriate funds and prescribe member contributions for any state-operated retirement system which will insure the availability of funds to meet all normal and accrued liability of the system on a sound actuarial basis as determined by the governing body of the system.
>
> Assets and funds established, created and accruing for the purpose of paying obligations to members of the several retirement systems of the State and political subdivisions shall not be diverted or used for any other purpose.
>
> Notwithstanding the provisions of Section 11 of this article, the funds of the various state-operated retirement systems may be invested and reinvested in equity securities.

S.C. Const. Art. X, Section 16. South Carolina Code Title 9 gives further authority to the South Carolina Retirement System.

Wehle v. S.C. Retirement System, 363 S.C. 394, 611 S.E.2d (2005). The United States District Court held that the South Carolina Retirement System, as administrator, was an arm of the State because the "relief sought would withdraw funds from or deny funds to the Retirement System. Such actions would ultimately impact the State treasury, thereby implicating the immunity from suit provided for by the Eleventh Amendment." Hutto v. S.C. Retirement System, 899 F.Supp.2d 457, 476 (2012). In that case, the court gave immunity to the South Carolina Retirement System pursuant to the 11th Amendment. Id. The Supreme Court of South Carolina has previously stated the retirement statutes:

> "should be liberally construed in favor of those to be benefitted and the objective sought to be accomplished." King v. South Carolina Ret. Sys., 319 S.C. 373, 461 S.E.2d 822 (1995). Nevertheless, the SCRS [South Carolina Retirement System] is also "administered under an elaborate statutory and constitutional scheme designed to protect the independence, integrity and actuarial soundness of the funds." Wehle v. South Carolina Ret. Sys., 363 S.C. 394, 399 611 S.E.2d 240, 242 (2005).

Duvall v. S.C. Budget & Control Board, 377 S.C. 36, 41, 659 S.E.2d 125, 127 (2008).

Therefore, keeping all that in mind, let us examine the statutes in question. Statutes are presumed to be prospective unless there is specific language or clear legislative intent to make them retroactive. Op. S.C. Atty. Gen., 2012 WL 3611779 (August 9, 2012) (citing S.C. Dept. of Rev. v. Rosemary Coin Machines, Inc., 339 S.C. 25, 528 S.E.2d 416 (2000); Bartley v. Bartley Logging Co., 293 S.C. 88, 359 S.E.2d 55 (1987)). The United States Supreme Court held retroactive legislation could have a rational legislative purpose. In that opinion the Court held:

> Congress therefore utilized retroactive application of the statute to prevent employers from taking advantage of a lengthy legislative process and withdrawing while Congress debated necessary revisions in the statute. Indeed, as the amendments progressed through the legislative process, Congress advanced the effective date chosen so that it would encompass only that retroactive time period that Congress believed would be necessary to accomplish its purposes. As we recently noted when upholding the retroactive application of an income tax statute in United States v. Darusmont, 449 U.S. 292, 296–297, 101 S.Ct. 549, 551–552, 66 L.Ed.2d 513 (1981) (per curiam), the enactment of retroactive statutes "confined to short and limited periods required by the practicalities of producing national legislation ... is a customary congressional practice." We are loathe to reject such a common practice when conducting the limited judicial review accorded economic legislation under the Fifth Amendment's Due Process Clause.

Pensions Ben. Guar. Corp. V. R.A. Gray & Co., 104 S.Ct. 2709, 467 U.S. 717 (1984). In this situation, a plain reading of South Carolina Code Section 9-1-1140 and Section 9-11-50 shows clear intent to enact the statutes retroactively to January 2, 2013 from their signed dates of June of 2013. As this Office has previously cautioned, "aside from the suspicion with which all retroactive operation is regarded, the standards of judgment for determining the fairness of retroactive laws are not significantly different from those which apply under constitutional limitations which affect all legislation." Op. S.C. Atty. Gen., 1998 WL 747049 (September 25, 1998) (citing Sutherland Stat. Constr. § 41.05 (4th ed. 1986)). However, even if the language in the intent of the statutes is clear, which it appears to be, we must examine your

constituent's legal question. Your constituent's letter states he applied to the S.C. Retirement System in March of 2013 to purchase years of service. Your constituent's letter further states the Retirement System confirmed receipt of his application in March of 2013, which was before the 2013 amendments had passed. Your constituent says his application to purchase years of service was denied in July of 2013 based on the retroactive law.[3]

In regards to any contract claims, South Carolina Constitution Article I, Section 4 states:

> No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be padded, and no conviction shall work corruption of blood or forfeiture of estate.

S.C. Const. Art. I, § 4. Similarly, the United States Constitution states:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility

U.S.C.A. Const. Art. I § 10, cl. 1.[4] As this Office has previously stated in opinions, the purpose of the Contract Clause in the U.S. Constitution exists to:

> "prevent[] the states from passing any legislation that would alleviate the commitments of one party to a contract or make enforcement of the contract unreasonably difficult. The primary intent behind the drafting of the clause was to prohibit states from adopting laws that would interfere with the contractual arrangements between private citizens. Specifically, the drafters intended to inhibit the ability of state legislatures to enact debtor relief laws. Those who attended the Constitutional Convention recognized that banks and financers required some assurance that their credit arrangements would not be abrogated by state legislatures." [Nowak, Constitutional Law (2d Ed. 1983), page 462.] While the emphasis of the Contract Clause of the federal constitution was on contracts between private parties, the United States Supreme Court in deciding The Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629 (1819), made it clear that the Contract Clause would prevent a state from abrogating contracts or agreements to which it was a party.

Op. S.C. Atty. Gen., 2012 WL 3611779 (August 9, 2012) (citing Op. S.C. Atty. Gen., 1996 WL 452776 (May 14, 1996)). The opinion went on to state:

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[3] This Office makes no verification of the facts as given. While your constituent gave other details, this Office is only analyzing the legal question at issue.

[4] Please note these are not ex post facto laws as they do make anything criminal. They are retroactive laws because they change the law and those changes go into effect in time before the law was passed.

As the South Carolina Supreme Court noted in G-H Insurance Agency, Inc. v. Continental Insurance Company, 278 S.C. 241, 294 S.E.2d 336, 338 (1982), "[c] ontracts generally are subject to legislative regulation prospectively." In 2 Sutherland, Statutory Construction § 41.07, it is stated that:

> [t]here are numerous decisions which purport to rest on an unqualified proposition that retroactive laws may not violate obligations of contract. However, the protection against retroactive impairment of contract rights is subject to the same considerations as those which apply in determining the legality of retroactive impairment of noncontract rights, under the due process clauses..... **[R]etroactive application of statutes to preexisting contracts is acceptable when the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end.** [FN1]

In G-H Insurance Agency, an insurance agency entered a contract with an insurance company. Under the terms of the contract, termination could be made by either party at any time. Subsequently, the Legislature enacted a statute which required that no insurer could cancel its representation by an agent for certain reasons. The Court held that the legislative enactment unconstitutionally impaired existing contracts. Relying primarily upon the Fourth Circuit Court of Appeals decision in Garris v. Hanover Ins. Agency, 630 F.2d 1001 (4th Cir. 1980), and the United States Supreme Court's decision in Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978), the Court invalidated the statute, stating:

> [t]he impact of the provision was traumatic to some agents and insurance companies. There was no provision for gradual application for a grace period. No opportunity was given to renegotiate agency contracts. The impact of the proscription was immediate, irrevocable and without limit as to time.

G-H Insurance Agency, 294 S.E.2d at 340.
To determine whether a contract may have been impaired by legislation, **a test is suggested** by the Spannaus Court.

> [T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.
> The severity of an impairment of contractual obligations can be measured by the factors that reflect on the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them.

Id., 438 U.S. at 243-44.

Op. S.C. Atty. Gen., 2012 WL 3611779 (August 9, 2012). A 2012 South Carolina Supreme Court case stated that in order to establish a Contract clause violation, the court must determine:

1) Whether there is a contractual relationship;
2) Whether the change in the law impairs that contractual relationship; and
3) Whether the impairment is substantial.

Harleysville Mut. Insur. Co. v. State, 401 S.C. 15, 28-29, 736 S.E.2d 651, 658 (2012) (citing Hodges v. Rainey, 341 S.C. 79, 93, 533 S.E.2d 578, 585 (2000) (citing Gen. Motors Corp. v. Romein, 503 U.S. 181, 112 S.Ct. 1105, 117 L.Ed.2d 328 (1992))). However, the South Carolina Supreme Court has been clear in stating that retirement benefits are granted solely by statute and "in the absence of a provision in the statute directing otherwise, the right to benefits does not arise until an application is made and proof is submitted as the statute requires." Anderson v. S.C. Retirement System, 278 S.C. 161, 293 S.E.2d 312 (1982). Whether or not your situation would be a Contract clause violation would require a factual determination by a court.

Nevertheless, in 1947 the Supreme Court of South Carolina addressed a similar question concerning a law enforcement officer's retirement. In that case, the Court found the Board of Commissioners of the Police Insurance and Annuity Fund of the State of South Carolina was estopped from denying insurance benefits based on the injustice to the retiree. The court additionally discussed it believed the legislative intent was to make the statute prospective in application rather than retrospective, but the legislative intent did not govern the court's decision as estoppel already determined the outcome of the case. Powell v. Board of Com's of Police Ins. & Annuity Fund of State, 210 S.C. 136, 41 S.E.2d 780 (1947). Nevertheless, that case is distinguishable from your question in that there was no clear language or intent to make the statute retroactive in effect whereas S.C. Code § 9-1-1140 has clear language making the statute retroactive in effect. As the S.C. Court of Appeals previously stated:

> Misrepresentations by government officials acting within the proper scope of their authority may subject the government to estoppel. *McCrowey v. Zoning Bd. Of Adjustment of City of Rock Hill*, 360 S.C. 301, 305-306, 599 S.E.2d 617, 619 (Ct.App.2004) (citing *S.C. Coastal Council v. Vogel,* 292 S.C. 449, 453, 357 S.E.2d 187, 189 (Ct.App.1987)). However, estoppel is not appropriate where a government official or employee with limited authority erroneously provides advice beyond the scope of his authority. *McCrowey,* 360 S.C. at 305, 599 S.E.2d at 619 (citing *DeStefano v. City of Charleston,* 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (1991)). Estoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute. *Office of Personnel Management v. Richmond,* 496 U.S. 414, 415-16, 110 S.Ct. 2465, 110 L.Ed.2d 387 (1990). Simply stated, equity follows the law. *Smith v. Barr,* 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct.App.2007).
>
> Estoppel based on erroneous advice is inappropriate under the facts of this case. Retirement Systems administers South Carolina's state-employee retirement plans. Providing plan members with correct information concerning their rights and benefits

> is therefore within Retirement Systems' purview. Morgan argues Retirement Systems misled him concerning his eligibility to purchase Non-Qualified Service. However, eligibility to purchase service credit is purely statutory. Retirement Systems had no discretion to determine an individual member's eligibility and thus lacked authority to contradict the statute. Therefore, estoppel is improper here under both *McCrowey* and *Richmond.*
>
> Morgan further argues Retirement Systems should be estopped because Retirement Systems' delays in processing his requests for service credit prevented him from effecting the purchases before his salary increased. The doctrine of equitable estoppel may be enforced in a court of law as well as in equity matters. *Strickland v. Strickland,* 375 S.C. 76, 85, 650 S.E.2d 465, 471 (2007). "The party asserting estoppel bears the burden of establishing all its elements." *Estes v. Roper Temp. Servs.,* 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct.App.1991). A government entity may be equitably estopped in matters that do not affect the due exercise of its police power or the application of public policy. *Grant v. City of Folly Beach,* 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001). Estoppel may apply against a government agency. *Id.* A party asserting estoppel against the government must prove "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." *Id.* Absent even one element, estoppel will not lie against a government entity. *Id.* However, citizens are presumed to know the law and are charged with exercising "reasonable care to protect [their] interest[s]." *Smothers v. U.S. Fidelity and Guar. Co.,* 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct.App.1996).

Morgan v. S.C. Budget & Control Board, 377 S.C. 313, 659 S.E.2d 263 (Ct.App.2008). Whether or not your constituent could prove all three elements of estoppel is also a factual question for the courts to answer. Nonetheless, it is clear that as a state employee, your constituent would have a vested interest in his retirement plan. Anonymous Taxpayer v. S.C. Dept. of Rev., 377 S.C. 425, 661 S.E.2d 73 (2008).

This Office was previously asked in an opinion to determine if the Budget and Control Board acted properly in determining two rulings as applicable to a certain petitioner. In that opinion, this Office stated we would not judge based on the merits of the case as long as the decision was within the Board's discretion, made on a rational basis and evenly applied. The opinion cited S.C.E.&G. v. S.C. Public Service Authority, 215 S.C. 193, 54 S.E.2d 777 (1949) in refraining from interfering with a government agency given discretion including to administer and manage the Retirement System. Op. S.C. Atty. Gen., 1976 WL 23068 (September 16, 1976). The Office also issued a prior opinion stating that the board can make administrative rulings such as limiting employment after retirement. Op. S.C. Atty. Gen., 1971 WL 17479 (March 12, 1971). As you are likely aware, this Office only issues legal opinions. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). "The absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views

suppressed therein were consistent with the legislative intent." Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)).

Conclusion: Unless and until the matter is litigated, your constituent must rely on the administrative decision of the Public Employee Benefit Authority ("PEBA") as this decision is within the PEBA's discretion. Assuming the facts provided by your constituent are accurate, a court may find a taxpayer who lawfully applied and qualified to purchase service time before the 2012-2013 amendment was passed may make the purchase under a legal or equitable theory (such as estoppel or pursuant to a contract). However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues and determines the facts presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General