

The State of South Carolina



Office of the Attorney General

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November 8, 1993

The Honorable Glenn G. Reese
Senator, District No. 11
117 Sun Valley Drive
Inman, South Carolina 29349

Dear Senator Reese:

Thank you for your recent correspondence to Attorney General Medlock concerning your request on behalf of John Smoak from Spartanburg. Several attorneys in this Office have been reviewing the matter toward a resolution more favorable to Mr. Smoak's position.

Chief Deputy Attorney General James P. Hudson spoke with Mr. Smoak several months ago to discuss Mr. Smoak's concern about the amount of money that he must pay in order to establish additional service credit for the time he spent in the military. After serving approximately four years and one month in the military, in 1958 Mr. Smoak went to work at Pacolet High School. Mr. Smoak never paid the amount necessary to establish his military service as additional service credit. Subsequently, Mr. Smoak left the school system and, we understand, upon the advice of Mr. Gressette, former Director of the Retirement System, withdrew his contributions from the Retirement System. Later, Mr. Smoak returned to teaching and paid in the amount necessary to reestablish his prior teaching service, but he never paid in the amount necessary to establish the prior military service. Mr. Smoak would now like to establish the prior military service.

S.C. Code Ann. § 9-1-1140 (1992 Cum. Supp.) governs the amount that a member of the Retirement System must pay to establish additional service credit for time spent in the military. The Retirement System has interpreted § 9-1-1140 to require members in Mr. Smoak's situation to pay based on their salary when they returned to State service. This position has been supported by an opinion of the Attorney General, dated December 12, 1980, which addresses § 9-1-1140. Enclosed are copies of the Code section and the opinion.

Request Letter

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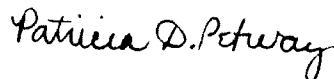
We have reviewed the prior opinion of this Office. While we do acknowledge that other interpretations of § 9-1-1140 can be made, it does not appear that the opinion is clearly erroneous; thus, the opinion of December 12, 1980 remains the opinion of this Office.

We have also considered another principle of statutory construction, that the interpretation of a statute by the agency charged with its enforcement is generally entitled to great weight and the most respectful consideration, and should not be set aside or overruled without cogent reasons. Brabham v. Cooper, 9 F.Supp. 904 (D.S.C. 1935); Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976).

While we can appreciate Mr. Smoak's position on the issue, we must advise that the position taken by the Retirement System is consistent with the position taken by this Office since the days of former Attorney General McLeod. I must also add that, if this Office were to have a different view, we have no authority to supersede the decisions of the Retirement System. I regret that we cannot be of greater assistance in this matter, but I am hopeful that the foregoing will be helpful.

With kindest regards, I am

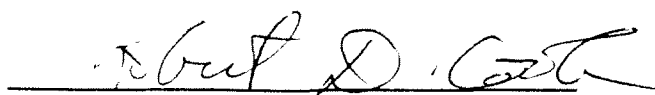
Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions