



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

October 26, 1995

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

RE: Informal Opinion

Dear Senator Reese:

By your recent letter to Attorney General Condon, you have sought an opinion as to the interpretation of S.C. Code Ann. §9-11-10, as to the inclusion of unused annual leave days in the calculation of retirement compensation for members of the Police Officers Retirement System. In essence, you are asking whether the South Carolina Retirement System is correctly calculating the amount of compensation upon which retirement compensation is based.

Section 9-11-10(14), S.C. Code Ann. (1994 Cum. Supp.), defines "average final compensation... ." The General Assembly, by that statute, has authorized that "[a]n amount up to and including forty-five days' termination pay for unused annual leave at retirement may be added to the average final compensation." The phrase "average final compensation..." is defined by that section to mean "the average annual compensation of a member during the twelve consecutive quarters of his creditable service on which regular contributions as a member were made to the System producing the highest such average[.]"

Since 1978, when Act No. 408 of 1978 permitted up to and including forty-five days termination pay for unused annual leave to be added into the calculation upon which retirement pay under the Police Officers Retirement System would be based, the South Carolina Retirement System has consistently interpreted the statute as including the allowed amount of unused annual leave to be included in the calculation before the three-

The Honorable Glenn G. Reese  
Page 2  
October 26, 1995

year average is to be figured and not added so as to give triple credit for the amount of unused annual leave. While it might be argued that this inartfully drafted statute is susceptible of various interpretations, we must acknowledge that the South Carolina Retirement System is the executive agency charged with implementation and enforcement of the retirement statutes. Both the courts and this Office have often stated that the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and should not be overruled without compelling and cogent reasons. Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987); Emerson Electric Co. c. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986); Faile v. South Carolina Employment Security Comm'n, 267 S.C. 536, 230 S.E.2d 219 (1976). Arguably, the absence of legislative amendment to reflect the interpretation placed on §9-11-10 by the Retirement System suggests that the views of the Retirement System have been consistent with legislative intent. C.f., Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977).

Because, as stated previously, the courts of this State give great weight and deference to administrative interpretations of statutes, this Office is constrained to agree that there is reasonable support for the interpretation given §9-11-10 by the South Carolina Retirement System. Because the statute is inartfully drafted, it might be advisable to have the General Assembly clarify the statute if the interpretation given it by the Retirement System is not consistent with the intent of the General Assembly.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General