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The State of South Carolina



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March 12, 1993

Dr. Donald E. Beers
Executive Director
South Carolina Association of
School Administrators
421 Zimalcrest Drive
Columbia, South Carolina 29210

RE: Option 4 of S.C. Code Ann. §9-1-1620

Dear Dr. Beers:

Attorney General Medlock has referred to me for reply your request for an opinion as to the legality of the South Carolina Retirement System adjusting the payments due to retirees who chose Option 4 of S.C. Code Ann. §9-1-1620 and retired before July 1, 1990.

Frequently members of the South Carolina Retirement System are eligible for a state retirement benefit before they are eligible to receive a Social Security benefit from the federal government. For example, a state employee who has been working for the State since age 25 will be eligible for a full state retirement benefit at age 55; however, this same member may not be eligible for a Social Security benefit until age 62. Rather than waiting until age 62 to receive the Social Security benefit, this member may choose Option 4 of §9-1-1620 and receive an additional monthly payment from the South Carolina Retirement System above and beyond the regular monthly payment to which he or she is entitled. This Option is chosen at the time of the state retirement and the additional monthly payment is based on the Social Security Administration's estimate of the monthly Social Security payment the member is expected to receive at age 62. This additional monthly payment continues until the member reaches age 62.

Upon reaching age 62 the member presumably begins receiving a Social Security monthly payment and the Retirement System's monthly payment is reduced by the amount of the originally estimated Social Security monthly payment. This reduction in the member's state

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monthly payment continues for the member's life. The Retirement System takes the position that it is necessary to structure the reduction in payments after age 62 in this fashion in order to comply with the language of the first sentence of §9-1-1620 which requires that the payments under the options be "of equivalent actuarial value" to the retirement allowance otherwise payable on the account. This requirement of actuarial equivalence is consistent with the general administration of the Retirement System. (See S.C. Code Ann. Art. 3, Title 9.) As the agency charged with the administration of this law, the System's construction of §9-1-1620 is entitled to the most respectful consideration. Laurens County School Districts 55 and 56 v. Cox, _____ S.C. _____, 417 S.E.2d 560 (1992). If everything works perfectly, the combined federal and state monthly payments received by the member after age 62 are approximately the same as the state monthly payment received before age 62.

As should be expected though, when calculations are based on estimates years in advance of payment, things may not work perfectly. Additionally, this factual situation is further complicated by the fact that the law in existence prior to July 1, 1990 (see, 1986 Act No. 309, §7, codified at S.C. Code Ann. §9-1-1810 (Supp. 1992); 1988 Act No. 475, §3 and 1989 Act No. 189, Part II, §60C, both codified at S.C. Code Ann. §9-1-1767 (Supp. 1992)) applied cost of living adjustments and special payments to the state's before-age-62 additional monthly payments. Some of these increases could not have been anticipated and required the Retirement System to increase the additional monthly payment above that originally estimated. This caused the member's before-age-62 total monthly payment to be greater than originally estimated. Because the member's before-age-62 total monthly payment is greater than estimated, there may be a substantial difference between the member's monthly payment before age 62 and the member's combined federal and state monthly payments after age 62. Because of this differential between before-age-62 monthly payments and after-age-62 monthly payments, the member may feel that the Retirement System has improperly reduced the state after-age-62 monthly payment.

With this factual background let me now address the question raised in your letter. Given the fact that the member chose Option 4, it is apparent that the Retirement System's action in adjusting monthly retirement payments after age 62 is not unilateral. As discussed above, the member in choosing Option 4 specifically authorized the downward adjustment of state retirement benefits to coincide with eligibility for the payment of federal Social Security benefits. The member who chose Option 4 expected to receive approximately the same total monthly payments after monthly

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Social Security payments were made as they received before age 62 when they were receiving only state payments. The member obviously knew the state monthly payments would be decreased after age 62 and by choosing Option 4, the member explicitly authorized the Retirement System to do so.

In conclusion, because the member chose Option 4 knowing that the state monthly retirement payments would be decreased at age 62, the South Carolina Retirement System legally may make downward adjustments in the monthly retirement payments of members who retired pursuant to the provisions of Option 4, S.C. Code Ann. §9-1-1620.

Yours very truly,



James Patrick Hudson
Deputy Attorney General

JPH:srcj

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