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# The State of South Carolina



## Office of the Attorney General

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September 3, 1991

Mr. Purvis W. Collins, Director  
South Carolina Retirement System  
P.O. Box 11960  
Columbia, South Carolina 29211

RE: Eligibility Request for Membership in the South Carolina Retirement System - Probation, Parole and Pardon Board (Michael J. Cavanaugh)

Dear Mr. Collins:

I am in receipt of your letter wherein you inquire about the eligibility of members of the Board of Probation, Parole and Pardon Services (Board members) to participate in the South Carolina Retirement System.

As you are aware, S.C. Code Ann. §9-1-420 states that all persons who have become employees after December 31, 1948, except those specifically excluded under §9-1-450 or those as to whom membership is optional under §§9-1-510 to 9-1-560, have become members of the Retirement System as a condition of their employment. Because I have not been provided any information to the contrary, I will assume that current Board members were appointed after December 31, 1948, that they are not specifically excluded by virtue of §9-1-450, nor are they entitled to choose not to become members of the System pursuant to §§9-1-510 to 9-1-560. Thus, the only issue remaining as to their eligibility to participate in the South Carolina Retirement System is whether they are "employees" as defined by S.C. Code Ann. §9-1-10(4). Section 9-1-10(4) states in part that "employee" shall mean, to the extent he is compensated by the State, any employee, agent or officer of the State or any of its departments, bureaus, and institutions whether such employee is elected, appointed or employed. The Board of Probation, Parole and Pardon Services exists pursuant to S.C. Code Ann. §24-21-10 et seq. which establishes the terms, manner of appointment, and

Mr. Purvis W. Collins  
September 3, 1991  
Page 2

duties of the Board members. According to information provided with your letter, the Board members are clearly compensated by the State. Further, the Board members are clearly employees, agents or officers of the State, thus they are "employees" as defined by §9-1-10(4). Because they are "employees" the Board members are automatically members of the Retirement System pursuant to the operation of §9-1-420.

You have also asked that I review Code Section 9-1-10(16) and Regulations 19-905, 19-905(F), 111-14 and 111-15 as pertinent to this question. S.C. Code Ann. §9-1-10(16) defines the term "earnable compensation". While earnable compensation is an important concept for computation of the Retirement allowance, if any, to which the Board members will be entitled, earnable compensation has nothing to do with eligibility for membership in the System in this case. It is clear from the material provided me that these Board members are in fact compensated by the State. They regularly receive both per diem and hearing fees as remuneration for their service to the State. These per diem and hearing fees clearly fall within the definition of earnable compensation as found in §9-1-10(16).

S.C. Code Ann. Regs. 111-14 and 111-15 were repealed effective June 1, 1982 and have been incorporated into the regulations of the State Budget and Control Board. S.C. Code Ann. Reg. 19-905(C) is similar to former regulation 111-14 and S.C. Code Ann. Reg. 19-905(F)(2) is similar to former regulation 111-15. Regulation 19-905(C) by administrative policy precludes retirement credit when remuneration for services is limited to per diem payments. In three separate parts of this short Regulation it is clear that no retirement credit is to be given when remuneration is solely by per diem. That is not the case at present. Here, the Board members are remunerated both by per diem as well as by hearing fees. For this reason the limitation found in Reg. 19-905(C) does not apply and Board members are entitled to retirement credit for their services to the State.

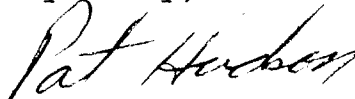
Regulation 19-905(F)(2) states that when compensation includes fees, the amount to be paid by the employee and matched by the employer shall be based upon the net fees and not the gross fees. Net fees mean gross fees less necessary operating expenses and include only those fees which the employee may lawfully retain. While this regulation may be important in computing the employee and employer contributions to the System, it is irrelevant to a determination of the issue of eligibility of Board members for membership in the System.

I have also reviewed the remainder of Regulation 19-905 and I can find no provision that impacts on the issue of eligibility of

Mr. Purvis W. Collins  
September 3, 1991  
Page 3

Board members to participate in the South Carolina Retirement System. For the reasons shown above, it is the opinion of this Office that members of the Board of Probation, Parole and Pardon Services are eligible to participate in the South Carolina Retirement System.

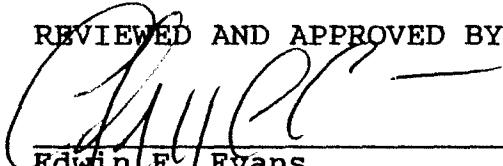
Yours very truly,




James Patrick Hudson  
Deputy Attorney General

JPH/srcj

REVIEWED AND APPROVED BY:



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