

The State of South Carolina

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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

May 29, 1990

The Honorable Douglas L. Hinds
Senator, District No. 34
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Hinds:

In response to your letter of May 3, 1990, a retired school teacher receiving benefits from the State Retirement System is subject to the \$9,500.00 cap on earnings if appointed to the Office of Magistrate. This cap is placed on earnings from employment covered by the System under the provisions of §9-1-1790. The Office of Magistrate in Georgetown County is a position covered by the Retirement System.

There are two Code sections that should be considered in conjunction with South Carolina Code §9-1-1790. First, the earnings cap is inapplicable if the retiree has retired mandatorily because of age pursuant to the provisions of South Carolina Code §9-1-1530. This section requires that an employee retire no later than the end of the fiscal year in which the employee attains the age of seventy-two. If the retiree has retired under the provisions of any other Code section, then the earnings cap remains in effect. One additional caveat concerning South Carolina Code §9-1-1530. If the retiree has attained the mandatory retirement age of seventy-two, he may only serve as a part-time employee of the State Court System. This would preclude the appointment of a person older than seventy-two years of age to a position of full-time magistrate.

The second Code section to be considered with South Carolina Code §9-1-1790 is the continuous employment provision of South Carolina Code §9-1-1590. A retiree in a position covered by the System for a continuous period of forty-eight months and earning an amount equal to or greater than seventy-five percent of the retiree's final average compensation may elect to cease the retirement allowance and become a contributing member again. In this way the retiree may increase the retirement allowance received upon final retirement.

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I hope this response has been helpful. If you have additional questions, please let me know.

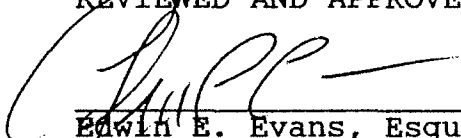
With kindest regards, I am,

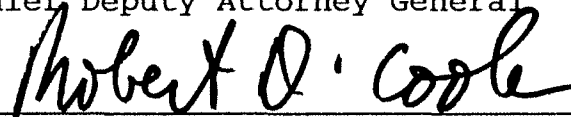
Yours very truly,


James Patrick Hudson
Deputy Attorney General

JPH/srcj

REVIEWED AND APPROVED BY:


Edwin E. Evans, Esquire
Chief Deputy Attorney General


Robert D. Cook, Esquire
Executive Assistant for Opinions