

VUGUNWYDVI, 11 1 140

summary

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11548
COLUMBIA, S.C. 29211
TELEPHONE 803-758-2072

February 5, 1985

Purvis W. Collins, Director
South Carolina Retirement System
Sol Blatt Building, Second Floor
Columbia, South Carolina 29201

Dear Mr. Collins:

You have requested an opinion as to whether a portion of § 9-9-60(2) enacted in 1979 became effective in 1979, or whether it was effective on January 1, 1976, the effective date of the statute to which the 1979 amendment was made.

Prior to 1975, the retirement allowance for retired members of the General Assembly was computed pursuant to a formula which was abandoned in 1975. In that year, the formula was changed by an amendment which by its terms became effective on January 1, 1976. Act No. 69 of 1975. Another change, the effective date of which is not in question, was made by Act No. 428 of 1978.

Act No. 82 of 1979, § 3, further amended § 9-9-60(2) by adding at the end of the subsection the words "prorated for periods of less than a year." That 1979 act provided that it was to become effective upon approval by the Governor and was approved on June 4, 1979.

A question has been raised by the State Auditor's Office as to whether a member could claim entitlement to an additional benefit for periods of service of less than a year before the 1979 act became effective. In other words, the question is whether the 1979 amendment made retroactive provisions for a claim to such service back to January 1, 1976.

An illustrative case is U.S. v. Burr, 159 U.S. 78 (1895). There an act of Congress provided that it was to be effective August 1, 1894; however, the bill which contained

REQUEST LETTER

that language did not actually become a law until August 28, 1894. The Court, citing an earlier case, held that "words in a statute ought not to have a retrospective application, unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied..." and concluded that the effective date was the actual date of enactment rather than the date recited in the statute.

Moreover, the fact that the General Assembly, in amending § 9-9-60(2) in 1979, reenacted the provision verbatim and added the words "prorated for periods of less than a year" is not controlling. It is well recognized that

... [t]he provisions of the original act or section reenacted by the amendment are held to have been the law since they were first enacted, and the provisions introduced by the amendment are considered to have been enacted at the time the amendment took effect. Thus, rights and liabilities accrued under the provisions of the original act which are reenacted are not affected by the amendment.

1A Sutherland, Statutory Construction, § 22.33. See also, 73 Am.Jur.2d, Statutes, § 343. It is the usual practice of legislatures to carry the full text of an amended statute forward to avoid "possible doubts as to the precise terms" of the law. Posadas v. Nat. City Bank, 296 U.S. 497, 506 (1936). Thus, the mere repeating the words "effective January 1, 1976" in the 1979 amendment by no means indicates the General Assembly intended to apply the amended portion retroactively. Instead,

[t]he portions of the amended sections which are merely copied without change are... considered to have been the law all along; and the new parts or the changed portions are not to be taken to have been the law at any time prior to the passage of the amended act.

1 Lewis Sutherland on Statutory Construction, § 237.

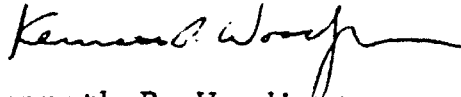
Finally, in the present instance, requiring the benefit for service of less than a year to be paid to persons who would not have made a contribution on such service would violate one of the fundamental operating principles of the Retirement System, that is, that service credit is only

Purvis W. Collins, Director
February 5, 1985
Page 3

given for service as to which a contribution has been made. Obviously, no person would have made a contribution for less than a year before 1979, the year in which the Legislature first decided to allow credit for periods of less than a year. Had the amended portion of the statute intended to be retroactive to 1976, it presumably would have provided for the payment of a contribution to cover the prorated partial year's service.

For the foregoing reasons, it is our opinion that the portion of § 9-9-60(2) amended in 1979 [by Act No. 82 of 1979, § 3] was intended to operate prospectively from the date of enactment.

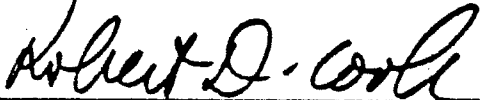
Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

KPW:rnr

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions