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The State of South Carolina



Office of the Attorney General

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March 12, 1985

The Honorable John W. Matthews, Jr.
Senator, District No. 39
608 Gressette Building
Columbia, South Carolina 29202

Dear Senator Matthews:

By your letter of March 6, 1985, you have asked for the opinion of this Office on whether county registration boards are subject to the mandatory retirement age requirement as are officials of the county. It is the opinion of this Office that such members are subject to the mandatory retirement age requirement.

Section 9-1-1530, Code of Laws of South Carolina (1983 Cum. Supp.), contains the following provisions on the mandatory age of retirement:

Any employee or teacher in service who has attained the age of seventy years shall be retired forthwith, except that:

- (1) With the approval of his employer he may remain in service until the end of the year following the date on which he attains the age of seventy years;
- (2) With the approval of his employer and the Board he may, upon his request therefor, be continued in service for a period of one year following each such request until such employee has reached the age of seventy-two years; and
- (3) With the approval of his employer, upon his request therefor, be continued in service for such period of time as may be necessary for such employee to qualify for

REQUEST LETTER

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coverage under the old age and survivors insurance provision of Title II of the Federal Social Security Act, as amended.

It shall be mandatory for any employee or teacher whether or not appointed and regardless of whether or not a member of the South Carolina Retirement System to retire no later than the end of the fiscal year in which he reaches his seventy-second birthday.

This section shall not apply to any person holding an elective office.

This section shall take effect July 1, 1969. Provided, however, no person affected by the provisions of this section shall be required to retire prior to July 1, 1971.

Provided, however, that excepting constitutional offices, this section shall not apply to appointive offices receiving per diem or travel allowances as total compensation or to employees of the State Court System when such court employees are employed on a part-time basis.

The term "employee" is defined by Section 9-1-10(4) of the Code; part (c) applies to county officials:

"Employee" shall mean ... (c) any agent or officer of any county, municipality or school district, or of any agency or department thereof, ... to the extent he is compensated for services from public funds....

It has been determined by this Office on numerous occasions that a member of a registration board is a public officer; see Ops. Atty. Gen. dated August 10, 1978; October 20, 1982; October 22, 1982. Funding for compensation of such members is provided through the budget of the State Election Commission to county treasurers. Part I, Section 13 of Act No. 512, 1984 Acts and Joint Resolutions, contains the following proviso:

Provided, That the amount appropriated in this section for 'County Board of Registration members', shall be disbursed annually at the rate of \$5,000.00 to each County Treasurer. These funds shall be disbursed equally to the members of the County Boards of Registration only. ...

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Clearly, these board members are compensated with public funds. It therefore appears that members of county boards of registration would come within the definition of "employee" in Section 9-1-10(4)(c).

The proviso to Section 9-1-1530 of the Code, quoted above, stating that Section 9-1-1530 would not apply to "appointive offices receiving per diem or travel allowances as total compensation," would not be applicable in this instance. Funding for county board members is within Part I, Section 13(II) of the Appropriations Act (Act No. 512 of 1984), under the heading "Distribution to Subdivisions: Aid to Counties -Boards of Registration." By contrast, appropriations for per diem are specified in Sections 13(I) and (III)(B). Because the appropriation for board members does not fall within the line items for per diem, it must be assumed that funds paid to board members are not per diem. While we understand that some county board members may receive additional compensation from the county, we understand further that no member of a county board of registration receives only per diem or a travel allowance. Thus, the proviso is not applicable.

Therefore, because members of county boards of registration are "employees" as that term is defined and since they are not subject to the proviso of Section 9-1-1530, the members would be subject to the mandatory retirement age requirements as stated above.

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

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