

1984 WL 249845 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 22, 1984

\*1 Joseph C. Griffith  
Assistant Director  
South Carolina Retirement System  
Sol Blatt Building  
Second Floor  
Columbia, South Carolina 29201

Dear Joe:

You have requested an opinion as to whether persons hired under Budget and Control Board Special Contracts are eligible to be members of the Retirement System. While it is true that the Special Employment Contract provides that Special Contract Employees shall not be eligible to participate in the Retirement System, § 9-1-420 provides, with exceptions not here relevant, that '[a]ll persons who have or shall become teachers or employees . . . shall become members of the System as a condition of the their employment.' Thus, notwithstanding the terms of the Employment Contract, the statute requires membership and State Personnel Division has no authority to prohibit membership in the Retirement System. The opinion of this office dated January 6, 1984, which does not consider the effect of § 9-1-420, is hereby withdrawn. I would suggest that any Special Contract Employee who wishes to purchase creditable service might be given special consideration as to the terms of payment because the error was entirely on the part of the employer.

The remaining two questions mentioned in your letter are answered by the opinion dated November 22, 1983, a copy of which is enclosed. That opinion concludes that the age limits of § 9-1-1530 apply to Special Contract Employees and further concludes that such persons, as employees, are subject to the earnings limitations of § 9-1-1790. If for some reason the work can be characterized as consultative in nature and not a return to employment, the provisions of § 9-1-1600 would apply.

Sincerely yours,

Kenneth P. Woodington  
Senior Assistant Attorney General

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