

1982 WL 189148 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 21, 1982

**\*1 Re: Retirement System: Contested employer contributions of Newberry County**

William T. Putnam  
Executive Director  
South Carolina Budget and Control Board  
Wade Hampton Office Building  
Columbia, South Carolina 29201

Dear Mr. Putnam:

At its December 22, 1981, Executive Session, the Board requested an opinion of this office as to the following facts: A former employee of the City of Newberry, not covered by the Retirement System at the time of that employment, became employed by Newberry County and is presently so employed. Pursuant to [§ 9-1-440, 1976 Code](#) of Laws, the employee is entitled to purchase retirement credit for his previous non-covered service with the City by making an employee contribution in the amount set forth by [§ 9-1-440](#).

Funding for the Retirement System comes both from employee contributions and from corresponding employer contributions as required by §§ 9-1-1020 and 9-1-1050. The question which this matter presents is whether the employer contribution for prior creditable service should be made by the present employer or by the employer for whom the service was rendered.

Except for § 9-1-860, to be discussed below, the retirement statutes (§§ 9-1-10 *et seq.*) do not make specific reference to the payment of employer contributions in the usual case where a member seeks to purchase creditable service. [Section 9-1-440](#) mentions only the employee contribution. It is clear that the act envisions such employer contributions, however; for instance, § 9-1-1140, which deals with credit for military service, provides that '[t]he required employer contribution shall be assumed by the State.'

In order to determine whether § 9-1-860 requires the county to make the employer contribution in this matter, it is necessary to examine the circumstances surrounding that provision. As originally created in 1945, the Retirement System generally covered only state employees. All other public employers, including counties and municipalities, were permitted to join or not join as they saw fit. Section 9-1-470. All 46 counties joined almost immediately, but other eligible employers were not as unanimous, and some still have not joined.

Upon a new employer's joining the System, its employees are given an option not to join (§ 9-1-480), which they may later revoke ([§ 9-1-440](#)). Employees who opted not to join and who later join may also purchase prior service credit according to [§ 9-1-440](#), as previously noted above.

Section 9-1-860 provides that employers who elect to participate may do so 'without prejudice to [employees'] claims to prior service credits but such electing employers and their employees . . . shall be subject to the payment of such contributions, if any, as the Board may determine to be necessary to avoid any possible discrimination as against employers and employees . . . coming under the terms hereof at an earlier date.

The intent of this section is to equalize the rate of contribution so that, for example, all employees will receive service credit on the same basis. In order to effect this equalization, it permits the Budget and Control Board to require contributions from employers (or employees) 'as the Board may determine to be necessary' to avoid discrimination. The 'discrimination' referred to would occur if some employees drew full retirement benefits without an employer contribution having been made on their behalf. The resulting payments would decrease the amount available to retirees whose contributions were matched by employer contributions.

\*2 At it presently reads, § 9-1-860 permits the Board to require contributions from 'electing employers,' i.e., those employers who did not automatically enter the Retirement System when it was created in 1945. It thus applies to both the city and the county in this instance. However, it is completely silent as to which 'electing employer' should be required to make the employer contribution in any given case. Accordingly, it is the opinion of this office that the Budget and Control Board has complete discretion to determine whether the contribution in this matter should be made by the county or by the city.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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