

1981 WL 157763 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 9, 1981

RE: David Milling (Deceased) SSN xxx-xx-xxxx

*1 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 concerning the following facts: a member who had designated his mother as beneficiary died with over 30 years retirement service credit. At the time of his death, his mother had predeceased him. Under the provisions of § 9-1-1650, this would mean that the accumulated contributions would be paid to the member's estate. Had the member died naming a surviving person as a beneficiary, § 9-1-1660 would permit the surviving beneficiary to receive an allowance for life instead of the accumulated contributions. In this case, the widow would receive \$348.00 per month for life instead of a lump sum amount of \$8,000.

The will of the deceased member appears to have named his wife as the sole beneficiary of all of his personal property, which means that she would be entitled to the lump sum amount provided for by § 9-1-1650.

There appears to be no particularly valid interest to be served by requiring Mrs. Milling to accept the lump sum amount when in practical effect her position is identical to that of a surviving widow who had actually been named as beneficiary. Under these circumstances, it is the opinion of this Office that the Budget and Control Board could validly exercise its administrative authority over the Retirement System to prevent an injustice by permitting Mrs. Milling to opt for the monthly benefit instead of the lump sum amount.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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