

1980 WL 120628 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1980

*1 Mr. Horace D. Harby
Director
Deferred Gifts and State Planning
Clemson University
Clemson, South Carolina 29631

Dear Mr. Harby:

You have requested an opinion concerning the creditability of your military service and the amount which you would have to pay to establish service credit. As I recall the facts, you have twelve years of military service but only six years of State service (if these figures are not exactly correct, they are representative of the situation). In order to establish any military service at all, the Retirement System has suggested that you make payment for 12 years even though under § 9-1-1140 you can at present only be credited with three years of military service (i.e., one year of military service for each two years of state service). Since you will soon retire at age 65, you will thereafter be unable to establish any more than three years of military service.

It is the opinion of this Office that § 9-1-1140, by requiring a single payment to establish service, does not require that you buy twice the number of years with which you will be credited nor does it require that you buy years of service which you will never be able to use. The operative language is 'provided that he shall pay to the System by a single payment prior to his retirement or death . . . all payments to the System that he would have been required to make for the period to be so credited . . .' Since the only period with which you will be 'so credited' is three years, it is apparent that you should only have to buy three years' time.

Further, it seems to be a contradiction in terms to deem service 'creditable' when in fact the member will receive no credit whatsoever for it.

It is therefore the opinion of this Office that in order to establish military service under § 9-1-1140, you will only have to make payment for the three years of military service with which you will actually be credited. However, should you reconsider and decide to work in State service for additional years, the language of the statute requiring a single payment would bar you from establishing any further military service.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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