

1979 WL 42739 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 8, 1979

*1 Honorable J. C. Duncan
Route 1
Box 222
Lyman, South Carolina 29365

Dear Representative Duncan:

You have requested an opinion of this Office as to the following situation:

For some time prior to being elected to the General Assembly, you were employed as a public school teacher and continued such employment after being elected to the General Assembly. You have proposed to transfer your service as a teacher, both in the years before your election to the General Assembly and also after your election, from the South Carolina Retirement System to the Retirement System for members of the General Assembly, pursuant to § 9-9-120(5).

There is no question that this may be done for the years prior to your election. The question is whether the years of simultaneous service may be transferred to the General Assembly Retirement System, thereby amounting to two years in that system for each calendar year since your election.

If the transfer were to be into the South Carolina Retirement System instead out of it, there would be no question that no more than one year's service could be creditable for all services in one year; § 9-1-840 specifically prohibits any more than one year of credit in one calendar year. However, no such section is found in the chapter which deals with the Retirement System for members of the General Assembly. Nevertheless, it is the opinion of this Office that the proposed transaction seeks to accomplish an impossibility. Realistically speaking, the only way in which one could claim service credit in the General Assembly Retirement System for two years in one calendar year would be if one held two seats in the General Assembly during that calendar year simultaneously. Since this is impossible, it is the opinion of this Office that any transaction which would accomplish this result would be violative of the legislative intent in establishing the System. In addition, no statute expressly permits this variation from the apparent legislative intent.

I realize that you might want to appeal this decision to the Budget and Control Board. If you wish to proceed by declaratory judgment in the Courts, this Office would be as cooperative as possible in trying to hold the costs of such an action down. I would also inform you that as you are probably aware, § 9-9-120(5) was repealed by § 27 of Part II of the 1978-79 Appropriations Act, Act No. 644 of 1978, page 2241. The effect of this repeal is that no further transfer of credit to the Retirement System for members of the General Assembly for service performed after December 31, 1978 may occur.

I am sorry that this opinion cannot be more helpful to your interests.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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