

1980 WL 121246 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 27, 1980

*1 Jack S. Mullins, Ph.D.

Director

Budget and Control Board

Personnel Division

1205 Pendleton Street

Columbia, South Carolina 29201

Dear Dr. Mullins:

You have requested an opinion as to whether certain beneficial treatment which is given to annual leave during the calendar year in which the employee retires may be had when the employee does not qualify for immediate retirement benefits upon his leaving employment. Specifically, § 8-11-620 provides:

Upon retirement from state employment or upon the death of an employee, a lump-sum payment will be made for unused leave, not to exceed forty-five days . . . and without regard to the earned leave taken during the calendar year in which the employee retires.

Section 9-1-1650, as amended, provides in effect that one may 'retire' at age 60 with as little as five years' service, which service need not have been completed immediately prior to retirement. A benefit based on only five years of service would not, of course, be very high, but in many cases a person may elect to leave covered employment before age 60 with only a few years lacking toward the requirement of thirty years for retirement at any age. The question is thus whether either or both of these situations constitute 'retirement' within the meaning of the applicable statutes.

Section 9-1-10(21) defines 'retirement' as 'the withdrawal from active service with a retirement allowance granted under the System[.]' Since this definition does not require that the retirement allowance be payable immediately upon the withdrawal from active service, it does not necessarily exclude those who elect to receive a deferred retirement allowance within its meaning. However, § 9-1-1650, in providing for a deferred retirement allowance, provides that it takes effect '[s]hould a member cease to be a teacher or employee except by death or retirement . . . ' and also provides for what happens '[s]hould a member die before retirement . . . ' This language suggests that a member is not viewed by the Retirement Act as 'retired' until he begins to draw retirement benefits. In view of this construction of the term 'retirement' within the Retirement Act itself, it is the opinion of this Office that the term 'retirement' as used in § 8-11-620 should be given the meaning ascribed to it in the Retirement Act and should be defined as only that time when a member retires and begins receiving retirement benefits immediately upon the cessation of employment.

Sincerely yours,

Kenneth P. Woodington

Assistant Attorney General

1980 WL 121246 (S.C.A.G.)