

1980 WL 121209 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 7, 1980

\*1 William H. Shackelford Col., GS, SCARNG

Chief of Staff

Military Department

Office of the Adjutant General

National Guard Armory

1225 Bluff Road

Columbia, South Carolina 29201

Dear Col. Shackelford:

Your letter of February 21, 1980, concerning the eligibility of Mr. Charles C. Thomas for the SCARNG Retirement pension has been forwarded to me for reply. Mr. Thomas had served in the military from 1942 through 1962, the last 14 years and 10 months having been served with the South Carolina National Guard. This service was terminated involuntarily for having twice failed to be selected for promotion. He then reenlisted in the National Guard and served for 5 years and 10 days.

Section 25-1-3210 provides for pensions for members of the National Guard of South Carolina. Among the requirements for such pension are that the member shall 'have at least 15 years of . . . service as a member of the South Carolina National Guard and the final or last 10 years of service immediately prior to retirement shall have been in the South Carolina National Guard.'

Although there would be a problem with the service record if credit toward retirement for the U.S.A.R. time were claimed, this problem does not exist if credit for that time is not claimed. In this case, as I understand Mr. Thomas' U.S.A.R. status, he could not claim pension credit for that time because he was in the inactive reserve. The general rule for construing statutes providing for pensions and other benefits is to accord such statutes of liberal construction. In this case no harm would be done to the spirit of the act in permitting Mr. Thomas to claim the pension. As I understand your letter, the fact that the guard service was not in the last 10 calendar years before retirement would not militate against awarding the pension. Therefore, it is the opinion of this Office that an intervening period of inactive reserve time will not destroy a persons eligibility to claim a national guard pension if his last ten years of military service were with the South Carolina National Guard.

Sincerely yours,

Kenneth P. Woodington

Assistant Attorney General

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