

1980 WL 120927 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 14, 1980

*1 Dennis M. Compos, Jr.
Spartanburg County Auditor
Post Office Box 5666
Spartanburg, South Carolina 29304

Dear Mr. Compos:

You have requested an opinion as to whether your involuntary removal from the coverage of the Retirement System from December 1, 1977 through July 1, 1979 may be disregarded in calculating the amount to be paid by you to establish military service credit. This amount, according to [§ 9-1-1140, 1976 Code of Laws of South Carolina](#), is 'determined on the basis of [the member's] earnable compensation at the time he first became a member of the System.' The Retirement System has, over a number of years, interpreted this to mean that the amount is to be determined by the salary earned at the outset of the member's present membership in cases where the member has withdrawn for a period of time.

While your letter and the papers in the files of the Retirement System indicate that coverage by the Retirement System of certain positions held by you was withdrawn, there is nothing to indicate that it was necessary or required that you withdraw prior contributions. In fact, the County memo dated August 11, 1977, states that leaving the money (accumulated contributions) in the Retirement System was one option for PSE employees who had been removed from Retirement System coverage, the other option being to request a refund of contributions. Since you did, according to the Retirement System's records, apply for withdrawal of contributions on a form signed on October 11, 1977 (copy enclosed), it would appear that but for this action on your part, you would still be considered a member as of August 20, 1974, the date of your first entry into the Retirement System. Although some aspects of your employment with Spartanburg County over the years were certainly not without difficulty and misunderstanding, I cannot find in the records any evidence that your withdrawal of contributions was made pursuant to a misunderstanding. Accordingly, I do not feel that the Retirement System was in error in requiring that your military service credit be purchased at your rate of compensation on July 1, 1979, the date of your re-entry into the System.

I regret that this opinion cannot be more favorable to your interests.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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