

1980 WL 120867 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1980

\*1 Carl R. Reasonover, Esquire  
Post Office Box 545  
Camden, South Carolina 29020

Dear Mr. Reasonover:

You have requested an opinion as to whether or not an individual who is 75 years old and who is trained in music may be utilized as a substitute teacher in the band programs of the three high schools in Kershaw County, South Carolina. As you note, [§ 9-1-1530, 1976 Code](#) of Laws, provides 'that it shall be mandatory for any employee or teacher, whether or not appointed and regardless of whether or not a member of the S.C. Retirement System to retire no later than the end of the fiscal year in which he reaches his 72nd birthday.'

Section 9-1-10(3) defines 'teacher' as 'any teacher . . . and any other person employed in the public school . . .'. There would thus appear to be no question that a substitute teacher is a 'teacher' for purposes of Chapter 1 of Title 9 of the Code.

Section 9-1-1790 provides that any retired member of the System may return to employment and earn up to \$4,500 per fiscal year; but that section was amended in 1977 to provide that a person who had been mandatorily retired because of age would not be eligible to return to employment.

Section 9-1-1600 provides

Any teacher or employee especially skilled in scientific knowledge and attainment may be temporarily employed by any part of the government or any agency thereof in a consultative capacity on a per diem compensation without such temporary consultative employment in any way affecting, reducing or cancelling his retirement benefits but such temporary consultative employment shall not exceed four months in any one year.

This section does not mention an age limitation and was not amended by the General Assembly in 1977 to include one. It is therefore fairly inferable that the General Assembly did not intend that a person retained in a consultative capacity must be less than 72 years of age.

There is a question, however, as to whether substitute teaching constitutes 'consultative employment.' In order to decide this question, more information is needed concerning the terms and conditions of the individual's proposed employment.

If you will provide the necessary information, we will be glad to examine the question further.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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