

1980 WL 120999 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 12, 1980

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

Dear Mr. Compos:

You have requested an opinion as to the interpretation of [§ 9-1-1140, 1976 Code of Laws of South Carolina](#). That section determines the amount to be paid by a member in order to establish military service credit, and provides that the cost of establishing credit 'shall be determined on the basis of [the member's] earnable compensation at the time he first became a member of the System.' It is assumed for the purposes of this opinion that you were once a member of the Retirement System, then ceased entirely to be a member, and then rejoined the System. The question thus is whether the cost of establishing military service can be determined on the basis of your salary at the time of your first period of membership or at the time when you rejoined the System.

The language quoted above from [§ 9-1-1140](#) was first enacted in 1972. From that time until the present, the Retirement System has interpreted the language as intending that the member should pay on the basis of his salary at the time he first became a member under his present account.

It is apparent that when a person becomes a member of the Retirement System more than once, there are two occasions on which he 'first became a member of the System.' The adoption of either as a point for determining the cost of establishing service would be valid, because the word 'first' in this context can apply to either the earliest date of membership or the initial date of any term of membership, whether or not it is the first membership.

The Supreme Court of South Carolina has often held that '[t]he construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons.' [Faile v. S.C. Employment Security Commission, 267 S.C. 536, 540, 230 S.E.2d 219 \(1976\)](#). This rule has further been held to apply particularly where, as here, the administrative interpretation occurred contemporaneously with the enactment of the statute and where the legislature has for a number of years acquiesced in it.

For these reasons, it is the opinion of this Office that the interpretation given the statute by the Retirement System is entitled to enforcement, and that the basis for establishing military service credit may properly be the time of the establishment of the member's present account.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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