

1977 WL 37369 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 22, 1977

*1 Mr. James H. Howey
Post Office Drawer 1049
Lancaster, SC 29720

Dear Mr. Howey:

You have asked whether the provisions of Section 61-104, 1962 Code of Laws, pertaining to disability retirement, are applicable when the application is for disability retirement is made after the member's employment has ceased. Section 61-104 provides in part:

Upon the application of a member in service or of his employer, any member in service on or after July 1, 1970 who has had five or more years of creditable service may be retired by the Board not less than thirty days and not more than ninety days next following the date of filing . . . (Emphasis added).

The language of the statute clearly appears to refer to retirement by the Budget and Control Board of a member who is in service at the time of his application. It is thus the opinion of this office that an application after employment has ceased is untimely.

I enjoyed talking with you recently and regret that this office's opinion must be contrary to your interests.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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