

2007 WL 2459757 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 2007

*1 The Honorable J. Yancey McGill
Member, South Carolina Senate
Post Office Box 759
Kingstree, South Carolina 29556

Dear Senator McGill:

We understand you desire an opinion of this Office interpreting section 1-11-730(F). Specifically, you ask: Would the person described herein be eligible for the state insurance plans with the full state contribution? This person had five years of service with a school district as a full time teacher prior to July 1, 1984, and now has 28 years credit in the retirement system in various positions, and has returned to full time state employment, so has been insured again for a period of one year.

Law/Analysis

Section 1-11-730 of the South Carolina Code (2005) governs persons eligible to participate in state insurance plans and the cost of such participation. This statute provides:

(A) A person covered by the state health and dental insurance plans who terminates employment with at least twenty years' retirement service credit by a state-covered entity before eligibility for retirement under a state retirement system is eligible for the plans effective on the date of retirement under a state retirement system, if the last five years are consecutive and in a full-time permanent position with a state-covered entity.

(B) A member of the General Assembly who leaves office or retires with at least eight years credited service in the General Assembly Retirement System is eligible to participate in the plans by paying the full premium costs as determined by the State Budget and Control Board.

(C) An active employee retiring with ten or more years of state-covered entity service credited under a state retirement system is eligible for state-paid premiums, if the last five years are consecutive and in a full-time permanent position with a state-covered entity.

(D) A person covered by the plans who retires with at least five years' state-covered entity service credited under a state retirement system is eligible to participate in the plan by paying the full premium costs as determined by the board, if the last five years are consecutive and in a full-time permanent position with a state-covered entity.

(E) A spouse or dependent of a person covered by the plans who is killed in the line of duty after December 31, 2001, shall receive equivalent coverage under the plans for a period of twelve months and the State shall be responsible for paying the full premium costs. After the twelve-month period, a spouse or dependent is eligible for state-paid premiums. A spouse is eligible for state-paid premiums under this subsection until the spouse remarries. A dependent is eligible for state-paid premiums under this subsection until the dependent's eligibility for coverage under the plans would ordinarily terminate.

(F) All state and school district employees employed before July 1, 1984, who were or would have been eligible for the plans upon completion of five years' service are exempt from the provisions of this section and are eligible for the plan effective on the date of their retirement.

*2 (G) A former municipal or county council member of a county or municipality which participates in the state health and dental insurance plans who served on the council for at least twelve years and who was covered under the plans at the time of termination is eligible to maintain coverage under the plans if the former member pays the full employer and employee contributions and if the county or municipal council elects to allow this coverage for former members.

(H) A person covered by the state health and dental plans who terminated employment with at least eighteen years' retirement service credit by a state-covered entity before eligibility for retirement under a state retirement system prior to 1990 is eligible for the plans effective on the date of retirement, if this person returns to a state-covered entity and is covered by the state health and dental plans and completes at least two consecutive years in a full-time, permanent position prior to the date of retirement.

In your letter, you explained the person in question had five years of service with a school district prior to July 1, 1984. You inquire as to whether this individual would be eligible for the state insurance plans with a full contribution under subsection (F). Because subsection (F) applies to those employed prior to July 1, 1984 who "were or would have been eligible for the plan upon completion of five year's service," we must consider the Legislature's intent with regard to someone who was or would have been eligible for plans in 1984. To make this determination we look to the law in effect in 1984.

The Legislature originally enacted section 1-11-730 in 1992 as part of legislation consolidating all existing statutes pertaining to the state health insurance plan into to chapter 11 of title 1. However, in our research, we discovered what we to believe to be the predecessor to section 1-11-730 codified as section 8-11-82. This Legislature appears to have enacted this provision as part of the 1984 appropriations act. 1984 S.C. Acts 2176. As originally enacted, this provision stated: A person covered by the State Health Insurance Plan who terminates employment with at least twenty years retirement services credit by the State or school district prior to eligibility for retirement under a state system shall become eligible for the State Health Insurance Plan effective with the date of retirement under a state retirement system. There shall be an open enrollment period annually to accommodate those persons who retired prior to the effective date of this Act.

An active employee retiring after the effective date of this Act who is covered by the State Health Insurance Plan who retires with less than ten years of state or school district service credited under a state retirement system is not eligible for state-paid premiums under the State Health Insurance Plan.

A state or school district employee who retires with at least five years service as a state or school district employee credited under a state retirement system is eligible to participate in the State Health Insurance Plan by paying the full premium costs as determined by the State Budget and Control Board.

*3 Id. Thus, according to this provision, a school district employee retiring with less than ten years, but at least five years of service under the state retirement plan may participate in the state health insurance plans, but this individual must pay the full premium costs.

In 1985, the Legislature amended this section by adding the following provision:

All state and school district employees employed prior to July 1, 1984, who were eligible or would have been eligible upon completion of five year[s] of service for the State Health Insurance Plan ar[e] exempt from the above provisions and become eligible for the plan effective with the date of their retirement.

1985 S.C. Acts 793 (sic). This provision is almost identical to section 1-11-730(F), with some slight modifications.

From our reading of the Legislature's enactment in 1985, we gather its intent to allow those employees satisfying the requirements in the last paragraph of the 1984 enactment to continue to be eligible for the State Health Insurance Plan. Because section 8-11-82, as it was written in 1984, required the employee to have at least five years of service under the state retirement system, we gather an individual seeking to qualify under subsection (F) of section 1-11-730 must have five years of service under the state retirement system prior to July 1, 1984 to qualify to participate in the state insurance plans.

Section 1-11-730(F) does not specify what if any contribution is required on the part of the employee in order to participate in the state health insurance plans under this provision. However, in looking at the law prior to July, 1 1984, we note section 8-11-82 required employees qualifying for the plans with five years of service to pay "the full premium costs as determined by the State Budget and Control Board." Thus, based on the requirements prior to July 1, 1984, we believe the Legislature intended individuals eligible for the plan based on five years of service to be responsible for the full premium costs.

Based on our analysis above, if the individual you describe in your letter has five years of service as a state or school district employee, which is credited under a state retirement system, they may participate in the state health plans upon retirement under section 1-11-730(F). In addition, we believe an individual participating in the state health plans under this section must pay the full premium costs¹.

Very Truly Yours,

Henry McMaster
Attorney General
By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General

Footnotes

- 1 Your request pertains solely to an individual's participation in the state insurance plans pursuant to section 1-11-730(F). Thus, this opinion is limited to that individual's participate under this subsection of 1-11-730.

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