

1979 WL 42980 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1979

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Dear Mr. Thomas:

You have recently asked the opinion of this Office as to 'whether a school district in South Carolina can establish its own deferred compensation plan (assuming it otherwise qualifies under the Internal Revenue Code) for its employees, or whether the school district is limited to use of the deferred compensation program established by' Act No. 97, 1977 Acts and Joint Resolutions, which has been codified as [§ 8-23-10 et seq., Code of Laws of South Carolina](#), 1976, as amended. This question was not addressed by an opinion of the Office dated February 13, 1979, which dealt only with State employees. The present opinion will analyze in two stages the question presented by you:

(1) Are school districts covered by the Deferred Compensation Program created by Act No. 97?

(2) If school districts are so covered, does this exclude the school districts from establishing their own deferred compensation plans?

Section 1 of Act No. 97 provides:

The purpose of this act is to enable employees of the State, its agencies and political subdivisions to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code . . . [EMPHASIS ADDED]

Section 5 further provides that for the purposes of Act No. 97, 'employees' includes 'any person whether appointed or elected providing services for the State or any political subdivision for which compensation is paid on a regular basis [EMPHASIS ADDED].' Sections 3, 4, 6, 7, 8 and 9 refer to the detailed involvement of 'political subdivisions' in the Deferred Compensation Program created by Act No. 97. Thus, it is clear that the General Assembly intended for local governmental entities and their employees to be covered by the provisions of Act No. 97.

It also is clear that by the use of the broad term 'political subdivision' the General Assembly intended to embrace all local governmental entities including school districts. This observation is supported by the following factors. First, with regard to the purpose of this Act, there does not appear to be any logical reason for differentiating between the employees of a school district and those of other political subdivisions of the State such as counties or municipalities. Moreover, the common legal meaning of the term 'political subdivision' with regard to a state embraces school districts. Words and Phrases, Vol. 32A, pp. 526-527.

Section 2 of Act No. 97 provides for a Deferred Compensation Commission which has the responsibility to:

. . . establish such rules and regulations as it deems necessary to implement and administer the Deferred Compensation Program.

... make such administrative appointments and contracts as are necessary to carry out the purposes and intent of this act and in the administration of account assets.

\*2 ... select through competitive bidding and contracts, plans for purchase of fixed and variable annuities, savings, mutual funds, insurance and such other investments as the commission may approve which are not in conflict with the State Constitution and with the advice and approval of the State Treasurer.

Section 3 requires that the 'investments shall be underwritten and offered in compliance with applicable federal and state laws and regulations by persons who are authorized by the commission.' These provisions demonstrate that the General Assembly sought and intended to establish an exclusive centralized program for the selection and approval of fiscally sound plans and investments to which the deferred compensation of all State and local public employees would be transferred. Allowing political subdivisions, and possibly state agencies, to independently develop various and numerous deferred compensation programs would directly contravene the intent of the General Assembly to protect the investment of these funds through a centralized oversight authority.

The conclusion that the General Assembly intends the Deferred Compensation Program established by Act No. 97 to be exclusive with regard to political subdivisions is further supported by the House of Representatives' repeated refusal to accept amendments to the Act deleting all references to those entities. House Journal, 1977, Vol. II, pp. 1515-1522, 1532-1533, 1699-1710. It appears that the purpose of the amendments was to allow for the introduction of general or special legislation to authorize political subdivisions to develop independent deferred compensation programs. This legislative history evidences that the legislature devoted considerable attention to the use of the term 'political subdivisions' and the inclusion of those entities and their employees within Act No. 97. It also gives rise to two relevant inferences. First, if the General Assembly did not intend to include school districts within the meaning of 'political subdivisions,' it would have provided a specific provision omitting them. Second, if Act No. 97 is not intended to be the exclusive deferred compensation program for political subdivisions, there would have been no need to offer the amendments.

Based on the foregoing reasons, it is the opinion of this Office that Act No. 97 applies to school districts and their employees and that the Deferred Compensation Program created thereby would exclude the districts from establishing their own deferred compensation plans.

Sincerely,

James M. Holly  
State Attorney

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