

1979 WL 43522 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 15, 1979

***1** Purvis W. Collins
Director
South Carolina Retirement System
Solomon Blatt Building
Columbia, South Carolina 29211

Dear Mr. Collins:

You have requested an opinion as to whether service as a U.S. Cadet Nurse during the World War II years constitutes military within § 9-1-1140. That section provides in part as follows:

Any member with two or more years of creditable service shall receive additional creditable service for the period of his military service . . . provided that he was discharged or separated from the military service under conditions other than dishonorable . . .

The U.S. Cadet Nurse Corps was created by Public Law 78-74, which was in effect from 1943 through 1946. That Act, as its title recites, had as its purpose 'to provide for the training of nurses for the Armed Forces, governmental and civilian hospitals, health agencies, and war industries, through grants to institutions providing such training, and for other purposes.' The Act provides that each nurse training center should submit a plan for the training of nurses, and that any such plan would be approved by the Public Health Service for grants only if it provided that no student or graduate nurse would be included under the plan 'unlessing the judgment of the head of the institution such nurse will be available for military or other federal government or civilian services for the duration of the present war, and such nurse so states in her application for inclusion under the plan.' § 2(a).

Because § 9-1-1140 speaks of ones discharge or separation from the military service, it seems clear that that section contemplates regular military service of the sort for which formal discharge or separation papers would be required. It is the opinion of this Office that to undertake training and in the course of such training to agree to be available for military service is not the same as actually being in military service on active duty, and that the Retirement Act did not contemplate that creditable service would be given for any service other than regular active duty and such other forms of military service as are defined by the United States Government as military service.

You have also requested whether attendance at graduate school from 1943 through 1946 may constitute prior service credit. Section 9-1-1140 does provide that a member may, subject to the approval of the Board, take a leave of absence for any purpose 'which might tend to increase the efficiency of the services of the member to his employer.' However, that section also provides that the members shall make monthly contributions to the System on the basis of the earnable compensation of such member at the time such leave of absence was granted. This, and the fact that this section was enacted after 1946, indicate that time spent in furthering ones education can only be counted as creditable service when approved in advance and when contributions are kept current. Since neither factor is present in this case, it is the opinion of this Office that the service in question cannot constitute creditable service.

Sincerely yours,

***2** Kenneth P. Woodington
Assistant Attorney General

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