

1979 WL 43534 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 22, 1979

\*1 Major Gen. T. Eston Marchant  
The Adjutant General of South Carolina  
1225 Bluff Road  
Columbia, S.C. 29201

Dear General:

You have requested that this Office review Attorney General's Opinion No. 4088, dated August 20, 1975, to determine whether it remains valid. You have further asked whether retired members of the South Carolina National Guard who served extended periods of time on active duty, so as to become eligible for retirement under [Title 10, Section 3911, United States Code](#), are thereby disqualified to receive the pension for retired Guardsmen provided by [Section 25-1-3210, Code of Laws of South Carolina](#), 1976.

The basic fact underlying these questions is that there are retired Guardsmen who have or are about to reach age 60, and would therefore be eligible for the State pension; but a question as to their eligibility has arisen because they are presently receiving retired pay from the Federal government for length of service on active duty.

1. It is the opinion of this Office that the prior opinion (No. 4088 of 1975) remains valid, as it refers only to retired pay from 'regular components of the Armed Services of the United States.' Code § 25-1-3220, as the 1975 opinion states, is designed to prevent two pensions, one from the 'regular' Army and one from the National Guard, being paid to the same individual.

2. The pension provided by [Code § 25-1-3210](#) is payable, however, to persons receiving retirement benefits from other than the 'regular components.' In the case at hand, the retired Guardsmen are receiving retired pay under [10 USC 3911](#) for active service while members of the National Guard but assigned to other duties. These active duty assignments do not affect their status as members of the National Guard nor make them members of 'regular components of the Armed Services of the United States.'

For example, one such person concerned was assigned to duty with the Selective Service System, and the Army ruled (U. S. Army Finance Support Agency, Form 20-148, dated 9 July 1978):

As a non-regular officer . . . you are completely exempt from [Federal] dual compensation restrictions . . .

The S. C. General Assembly likewise recognized eligibility for dual retirement benefits in similar cases by providing in Code § 25-1-3230:

Nothing contained in this article shall preclude or in any way affect the benefits that an individual may be entitled to from State, Federal or private retirement systems. [Note: this means other than 'regular component' retirement.]

As stated in Opinion No. 4088 of 1975, the purpose of the National Guard pension act was 'to provide potential guardsmen with an incentive to join the South Carolina National Guard, rather than the U. S. Army Reserve (or, other 'non-regular' military units). This intention would be clearly defeated if active duty assignments, which are to be expected during an individual's service in the National Guard, disqualified guardsmen from receiving the pension.

\*2 Only members of the South Carolina National Guard receiving retired pay from regular components of the Armed Forces of the United States are disqualified to receive the State pension at age 60.

Yours very truly,

Frank K. Sloan  
Deputy Attorney General

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