

1978 WL 35004 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 28, 1978

*1 Mr. Purvis W. Collins

Director

South Carolina Retirement System

Post Office Box 11960

Columbia, South Carolina 29211

Dear Mr. Collins:

You have requested an opinion as to the eligibility of a retired member to establish nonmember service under the circumstances described below.

The member was an employee of the State Ports Authority from 1947 until 1976, a total of 29 years and 4 months. During 8 years and 10 months of that time he was listed as a temporary employee. I assume that it has been decided, either by the courts or by the SPA itself, that the classification as a temporary employee was erroneous. During the member's time as a temporary employee no employer or employee contributions to the System were made and the member now wishes, on the basis of the decision that in fact he was not a temporary employee, to establish service credit for the period in question.

[Section 9-1-440, 1976 Code](#) of Laws, provides that service credit may be established only prior to retirement. However, § 9-1-290 grants the Budget and Control Board 'discretion . . . to prevent injustices and inequalities which might otherwise arise in the administration of the System.' It is the opinion of this Office that 'otherwise' refers to 'elsewhere in the Retirement Act' and that the present case constitutes a proper application of § 9-1-290 if the Board in its discretion chooses to decide in favor of the member. The inequity which this situation presents was caused by an error of the employer which is clear and on the record and which the employee had little chance of correcting. It is distinguishable from the relatively common occurrence where it is claimed, but cannot be proven, that someone in the Retirement System or with the employer gave incorrect advice concerning a member's options within the System. However, it is also the opinion of this Office that this decision must be made by the Board and embodied in a regulation in order to come within the authorization of § 9-1-290. In addition, this procedure protects the System against unwarranted attempts to expand an exception to the statute.

Accordingly, it is recommended that this matter be submitted to the Board for the exercise of its discretion.

Sincerely yours,

Kenneth P. Woodington

Assistant Attorney General

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