

1978 WL 35226 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 16, 1978

**\*1 RE: Greenwood County Commission on Alcohol and Drug Abuse**

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 whether the abovementioned Commission may terminate coverage with the Retirement System on the ground that they were erroneously covered for retirement when they were a part of the county payroll system. The Commission's letter of November 14, 1978, indicates that most if not all employees of the Commission are compensated for services from public funds; even though these funds come in large part from State and Federal sources rather than from Greenwood County, it still appears that the Commission's employees are 'employees' within the meaning of § 9-1-10(4)(c).

I feel, however, that another possibility exists with respect to this Commission. The question which arises is whether sub-agencies of the county automatically upon their creation become participants in the Retirement System if the county itself is a participant. It appears that it has not been the practice in many cases for such sub-agencies to automatically become participants; evidence of this is found in the numerous requests that come through your office and this office by such sub-agencies to become participants in the Retirement System long after the county itself has joined. The definition in the Retirement Act of 'employee', on which the definition of 'employer' depends in part, is found in Section 9-1-10(4)(c) which provides as follows:

"employee' shall mean . . . (c) any agent or officer of any county, municipality or school district or of any agency or department thereof . . ."

In the opinion of this Office, this statutory definition does not inevitably tie sub-agencies of the counties into the same Retirement System status as the county itself. I am informed that the county never advised the Commission of its options under the Retirement System, but instead merely began deducting retirement contributions from the Commission's employees' salaries from the outset. If such is the case, and if the agency was not advised of its option not to join the System, it would seem that it is eligible to withdraw under § 9-1-630, which provides for withdrawal of a member who has joined through error or misunderstanding.

A further investigation of the facts is probably necessary to determine whether an error actually occurred in this instance. Please let me know if any other questions arise concerning this matter.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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