

1975 WL 28863 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 28, 1975

*1 Mr. Purvis W. Collins
Director
S. C. Retirement System
P. O. Box 11960
Columbia, South Carolina

Dear Mr. Collins:

You have inquired as 'to whether the judges of the State participating in the Judges' Retirement System (South Carolina Code § 61-251, et seq.) may continue to participate as a member of the State Retirement System for Members of the General Assembly (South Carolina Code § 61-271, et seq.). On May 17, 1968, Attorney General McLeod issued an opinion wherein he concluded that the Judges' Retirement System is one to which the State contributes and it would appear that the Retirement System for Legislators is closed to further participation by a judge. The earlier opinion's conclusion was 'prompted by consideration of the fact that the Legislative Retirement System intended to prohibit participation in two retirement systems when each is sponsored or participated in by the State.' Specifically, in the May 1968 opinion, the language prompting the above conclusion was found in the original Act (Acts and Joint Resolutions of the General Assembly of 1966, Act No. 88) under Section 4(3) which provided:

'Notwithstanding any other provision of law, no person shall be entitled to receive duplicate credits or benefits, for the same period of service, under this System and any other retirement system to which the State contributes, with respect to such service . . .'

On April 25, 1967, Section 4(3) noted above was rewritten to read as follows:

(3) As used in this item 'correlated system' shall mean one or more of the following:

(a) South Carolina Retirement System;

(b) South Carolina Police Officers' Retirement System;

(c) Retirement System for members of the General Assembly of the State of South Carolina.

Notwithstanding any other provision of law, if a member of any correlated system ceases to occupy a position covered under the System and if, within the protective period and under such conditions as are set forth in the correlated system for continuation of membership therein, he accepts a position covered by another correlated system, he shall notify the Director of each System of such employment and his membership in the first System shall be continued so long as his membership in the other System continues. Service credited to the member under the provisions of the first System shall be considered service credits for the purpose of determining eligibility for benefits, but not the amount thereof, under the other System. Any benefit under any one of the correlated systems shall be computed solely on the basis of service and contributions credited under that System, and shall be payable at such times and subject to such age and service conditions as are set forth; provided, however, a member shall not be eligible to receive retirement payments so long as he is employed in a position covered by the South Carolina Retirement System or the South Carolina Police Officers' Retirement System.

*2 Notwithstanding the foregoing, for the purpose of determining qualifications of a member of the System to make an election pursuant to item (2) of this section, service credits under a correlated system shall be deemed to be credited service hereunder.

Notwithstanding the foregoing, a member may elect to transfer credit for such service to the Retirement System for members of the General Assembly under the provisions of item (5) of § 61-282.

(4) Should any member of the System in any period of five consecutive years after becoming a member be absent from service more than four years, withdraw his contributions or become a beneficiary or die, he shall thereupon cease to be a member. (1966 (54) 2081; 1967 (55) 252; 1969 (56) 703.)

A reading of the above quite clearly demonstrates the Legislature's intent to eliminate the blanket prohibition against participation in two Retirement Systems to which the State contributes. As is apparent from the definition of collateral systems, the Judges' Retirement System set forth under South Carolina Code §§ 61-251, et seq., was not included. It would, therefore, seem that in the amendment of Code § 61-274, the South Carolina Legislature intended that participation in the Judges' Retirement System would have no effect nor render any person ineligible for the full benefits of the Retirement System for members of the General Assembly or any other collateral system. Section 61-274(3) as now written establishes the relationship between the South Carolina Retirement System, the South Carolina Police Officers' Retirement System and the Retirement System for the Members of the General Assembly. It is clear that the Act was intended to take care of those situations wherein a person would be eligible for coverage under the Retirement System for Members of the General Assembly and also be eligible for coverage under either the South Carolina Retirement System or the South Carolina Police Officers' Retirement System. Nowhere in the Act establishing the Retirement System for Members of the General Assembly, South Carolina Code § 61-271, et seq., is there mention of the Judges' Retirement System, § 61-251, et seq.

It is the opinion of this Office, in light of the 1967 amendment to Code § 61-274 that the participation in the Retirement System for Members of the General Assembly has no effect on the participation in the Judges' Retirement System, nor does participation in the Judges' Retirement System have any effect upon an eligible party's participation in the Retirement System for Members of the General Assembly. The eligibility and participation in these two systems can, in the opinion of this Office, be at the same time and a qualified member can be eligible to receive retirement payments from both systems.

Sincerely,

A. Camden Lewis
Assistant Attorney General

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