

1975 WL 28867 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 29, 1975

*1 H. Mauldin Pearson
Magistrate
Route 1
Pacolet, South Carolina 29372

Dear Judge Pearson:

I am in receipt of your letter regarding Section 44-230, Code of Laws of South Carolina, 1962, as amended. (Pensions for Members of National Guard) In that letter you inquire as to the following: 1) Have the words ten years been changed to read three years in regard to Section 44-230(6)? 2) Does a break in service have any bearing on the service immediately prior to retirement?

As per your initial inquiry, the answer is simply no. Your second inquiry presents a more elaborate problem. The Editor's note to Section 44-230 provides instructive language which reads in part as follows:

'The provisions of this act shall apply only to members of the South Carolina National Guard serving on the effective date of this act and thereafter.'

On the basis of the above-cited language, it would appear at first blush that 'if a man was honorably discharged from the South Carolina National Guard in 1971 with 20 years service and enlisted again in 1974', would not be eligible for the pension benefits conferred by the act. However, I am given to understand that a discharged guardsman who left the South Carolina National Guard before the effective date of the act may avail himself of the benefits conferred thereunder provided 1) he has served twenty (20) years in the National Guard, fifteen of those with a South Carolina National Guard and 2) he re-enlists for at least another three (3) years with the South Carolina National guard. Colonel Wingate, Executive Assistant to the Adjutant General, has explained that the three (3) years requirement has been effected to benefit guardsmen who would not have otherwise been in compliance with the Act. Put differently, guardsmen caught up in the predicament as you have outlined would be benefited by the Act and the State would be protected from the 'johnny-come-latelies.' On the strength of the foregoing, it would appear that the individual you contemplate is entitled to the pension conferred by § 44-230. Please find enclosed a copy of a letter written by Assistant Attorney General Randall T. Bell to Major General Robert L. McCrady, Adjutant General of the State of South Carolina as said letter is highly instructive in this regard.

I suggest that you contact Colonel Wingate for a more definitive explanation of the three year re-enlistment requirement. Lastly, it should be considered transparent that the views expressed herein do not necessarily reflect the position of this Office but is offered for informational purposes only.

With kindest regards,
Very truly yours,

Herman L. Moore
Law Clerk

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