

1975 S.C. Op. Atty. Gen. 168 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4088, 1975 WL 22384

Office of the Attorney General

State of South Carolina

Opinion No. 4088

August 20, 1975

\*1 A person who receives full retirement benefits from a regular component of the Armed Forces of the United States is not eligible for benefits under the retirement program of the South Carolina National Guard.

To: Deputy Adjutant General

QUESTION PRESENTED:

Is an individual who receives full retirement benefits from a regular component of the Armed Forces of the United States entitled to receive benefits under the provisions of Section 44–230, et seq., 1962 Code of Laws, as amended?

AUTHORITIES INVOLVED:

Section 44–230, et seq., 1962 Code of Laws, as amended.

[Southeastern Fire Ins. Co. v. South Carolina Tax Commission](#), 253 S.C. 407, 171 S.E.2d 355 (1969).

[Jones v. South Carolina State Highway Dept.](#), 247 S.C. 132, 146 S.E.2d 166 (1966).

17 West's South Carolina Digest, Statutes § 181(1).

DISCUSSION:

In Section 44–230.1, 1962 Code of Laws, as amended, there is provided:

‘No individual receiving retirement pay as a result of length of service, age or physical disability retirement from any of the regular components of the Armed Forces of the United States will be eligible for benefits under this section.’

It is clear that the Legislature's intention was to insert a bar against a guardsman who is receiving retirement pay from a regular component of the Armed Forces. It is equally clear from the Act that the Legislature intended to provide potential guardsmen with an incentive to join the South Carolina National Guard rather than the U. S. Army Reserve. The first rule of construction in interpretation of statutes is that of intention on the part of the Legislature and where the terms of a statute are clear and unambiguous, the statute must be applied according to its literal meaning. [Jones v. South Carolina State Highway Dept.](#), 247 S.C. 132, 146 S.E.2d 166 (1966); cases collected in 17 West's South Carolina Digest, Statutes § 181(1).

In this case, there seems to be two possible interpretations of the above-quoted portion of Code Section 44–230.1. First, the language would seem to support the conclusion that no person receiving any retirement check from the regular components of the Armed Forces of the United States is eligible under the Act; this would preclude guardsmen who receive retirement benefits at age sixty from the United States Armed Forces from receiving benefits under the Pension Act. In effect, this would eliminate any guardsman over sixty from participating in the South Carolina National Guard

Pension Act. I do not feel that this was the intention of the Legislature, since all retired guardsmen will receive retirement benefits from the United States Armed Forces at age sixty.

The second and more logical interpretation would be to preclude any member of the National Guard or the Armed Forces who retires after twenty or thirty years of service with full benefits from the active Army from participating in the Pension Act. Where, as here, a statute is subject to more than one interpretation, the interpretation that more clearly effectuates the legislative intent or purpose must control. [Southeastern Fire Ins. Co. v. S. C. Tax Commission](#), 253 S.C. 407, 171 S.E.2d 355 (1969); cases collected in 17 West's, supra.

CONCLUSION:

\*2 It is, therefore, the opinion of this Office that any individual receiving full retirement benefits from a regular component of the Armed Forces of the United States is not eligible for benefits under the South Carolina Pension Act. This would include National Guard officers who have been on extended active duty and have retired with full federal retirement benefits.

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