

1984 WL 249862 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1984

\*1 Honorable Ramon Schwartz, Jr.  
Speaker of the House  
State House  
Columbia, South Carolina 29201

Dear Speaker Schwartz:

You have requested advice from this office concerning a request made by Family Court Judge Archie Beattie to retire under the Judges and Solicitors Retirement Act.

Judge Beattie served in various capacities, including Master for Lee County and Probate Judge for Lee County. These positions were covered by the South Carolina Retirement System, and on January 1, 1981, he retired from the State Retirement System with 39 ½ years of service.

On February 5, 1983, he was appointed Judge of the Family Court of the Third Judicial Circuit, from which position he intends to retire as of mid-1984. Although his retirement pay under the State System was stopped when he became Family Court Judge, it was later restored. The reason for this restoration was a determination by the Retirement System that there is nothing which prohibits a retired member under one System (here the State System) returning to employment covered by another System (here the Retirement System for Judges and Solicitors).

Judge Beattie has requested that his prior service be transferred to the Retirement System for Judges and Solicitors. However, because of the statutorily-mandated method of operation of the various Retirement Systems, it is the opinion of this Office that Judge Beattie no longer possesses service credit which could be transferred to the Judges' System, assuming that he is otherwise eligible to make the transfer. The reasons for this conclusion are set forth below.

Sections 9-1-1010 *et seq.* create three funds (only two of which are here of concern) into which the assets of the Retirement System are allocated. These funds will be referred to herein by the abbreviated terms 'employee fund' and 'employer fund.' The employee fund, created by § 9-1-1020, contains the contributions of active members. The employer fund, created by § 9-1-1050, contains, among other things, the funds from which retirement benefits are paid. If a member leaves State employment prior to retirement, he is refunded his contributions from the employee fund. However, if he retires, his accumulated contributions are transferred from the employee fund to the employer fund, from which his retirement benefits are paid. When a member retires, he ceases to be a 'member,' as defined by § 9-1-10(6), and instead becomes a 'beneficiary,' as defined by § 9-1-10(13).

The net result of all of these provisions is that once a member retires, he no longer possesses accumulated contributions which he can transfer from one System to the other. Since the proposal made by Judge Beattie would require the transfer of contributions, it is the opinion of this Office that the absence of contributions to transfer, which absence results from their prior transfer to the employer fund, makes the proposal impossible to carry out.

With best regards, I am  
Sincerely yours,

\*2 Kenneth P. Woodington

Senior Assistant Attorney General

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