

1981 WL 158181 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 13, 1981

***1 Re: Gainful employment for disability retirees**

E. D. Goodwin, Jr.
Assistant Director
Financial Services
South Carolina Retirement System
Sol Blatt Building, Second Floor
Columbia, South Carolina 29201

Dear Mr. Goodwin:

You have asked whether, for purposes of § 9-11580, 'gainful occupation' includes income from farming.

According to the above-mentioned section, 'gainful occupation' is something that a disability beneficiary 'is engaged in or is able to engage in . . .'. In other words, it would seem that income from gainful occupation means income which is derived from some act of the person involved. Excluded from the meaning of income from a gainful occupation would be such forms of income such as dividend income, rental income and interest.

The question has arisen in the context of someone deriving income from farming. Without knowing the type of employment from which the member retired, it is somewhat difficult to answer the question. However, if the work he does in connection with farming is similar to that from which he was retired, then obviously the benefits should be reduced. It appears, moreover, that this would be so even if the work done in connection with farming is entirely different from the work from which the member is retired, because § 9-1-1580 simply provides that the income should be from 'a gainful occupation' without regard to its similarity or dissimilarity to the member's prior employment.

For the above reasons, it is the opinion of this Office that if a disability beneficiary is actually engaged in the occupation of farming, as opposed to merely receiving income from it, the amount of the benefit should be reduced as provided in the statutes.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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