

1980 WL 120844 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 22, 1980

*1 Purvis W. Collins
Director
S.C. Retirement System
Sol Blatt Building
Second Floor
Columbia, South Carolina 19201

Dear Mr. Collins:

You have requested an opinion as to whether a person employed by various South Carolina school districts as a consultant on financial and attendance matters may be considered an 'employee' for purposes of eligibility for membership in the South Carolina Retirement System. The person who made the request renders his services to the school districts (some 14 in number in fiscal year 1980) on a contract basis and his payment for services is denominated a retainer. The request is to establish service both for several prior years and for present and future years.

The applicable statute is § 9-1-10(4), which provides in part:

'Employee' shall mean *** (c) any agent or officer of any county, municipality or school district, or of any agency or department thereof, which shall have been admitted to the System under the provisions of § 9-1-470, to the extent that he is compensated for services from public funds . . .

The standard definition of an independent contractor is that he is:

[O]ne, who, exercising an independent employment, contracts to do certain work according to his own methods, and without being subject to the control of his employer, except as to the product or result of his work.

Note, 4 S.C.L.Q. 150 (1952).

Under the facts stated above, there would appear to be no question that the person therein described in an independent contractor.

The question thus becomes whether an independent contractor is embraced within either the term 'agent' or the term 'officer' as used in § 9-1-10(4)(c).

An employee is always an agent, but an agent is not always an employee; sometimes an agent can be an independent contractor rather than an employee (see [Restatement 2d, Agency, §§ 1, 2](#)). However, in the majority of situations, the term 'agent' connotes employment status rather than independent contractor status (see [2A Words and Phrases, 'Agent'](#)). It is the opinion of this Office that employment status, and only employment status, is likewise connoted by the use of the term 'agent' in § 9-1-10(4)(c). The most obvious reason for this is the use of the term 'employee' in that section. In addition, however, there is nothing in the other four subsections of § 9-1-10(4) to indicate that independent contractors were intended to be covered. Section 9-1-10(4) appears to list specific examples of employment or other similar situations rather than to include the independent contractor relationship, which is an entirely different one from that of employment.

It is equally clear that an officer is not an independent contractor. The difference between an officer and an ordinary employee relates more to manner of appointment and significance of duties rather than to the factors which distinguish an employee from an independent contractor. See generally, 29A Words and Phrases, 'Officer.'

*2 For the foregoing reasons, it is therefore the opinion of this Office that independent contractors retained by school districts are not eligible under § 9-1-10(4)(c) to participate in the South Carolina Retirement System.

Sincerely yours,

James M. Holly
Assistant Attorney General

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