

1979 WL 43455 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
July 10, 1979

***1 RE: Appeal of J. C. Duncan**

William A. McInnis
Secretary
Budget and Control Board
P. O. Box 11333
Columbia, South Carolina 29211

Dear Mr. McInnis:

This letter, five copies of which are enclosed for distribution to the Board, sets forth this Office's position concerning Representative Duncan's appeal.

For some time prior to being elected to the General Assembly, Mr. Duncan was employed as a public school teacher and continued such employment after being elected to the General Assembly. He has proposed to transfer his service as a teacher from the South Carolina Retirement System to the Retirement System for members of the General Assembly. He served as a teacher for some years prior to his election to the General Assembly, and for four years (1969-1972), served both as a teacher and as a House member.

There appears to be no question that this transfer of service credit may be done for the years in which Representative Duncan taught school before his election. There is similarly no question that Mr. Duncan may receive credit for eight years' service in four years' time because he occupied two distinct positions, each requiring membership. The question is whether the four years of teacher service credit earned between 1969 and 1972 may be transferred to the General Assembly Retirement System, when service credit had already been earned in those four years under that system by Mr. Duncan's having been a member of the General Assembly during those years. In other words, the question is not whether credit for eight years' service in four years' time will be allowed, but instead is only whether the eight years' credit will be allowed under one system.

If the transfer were to be into the South Carolina Retirement System instead out of it, there would be no question that no more than one year's service could be credited for all services in one year; § 9-1-840 specifically prohibits any more than one year of credit in one calendar year. However, no such section is found in the chapter which deals with the Retirement System for members of the General Assembly. Nevertheless, it is the opinion of this Office that the proposed transaction seeks to accomplish an impossibility. Realistically speaking, the only way in which one could claim service credit in the General Assembly Retirement System for two years in one calendar year would be if one held two seats in the General Assembly during that calendar year simultaneously. Since this is impossible, it is the opinion of this Office that any transaction which would accomplish this result would be violative of the legislative intent in establishing the System. In addition, no statute expressly permits this variation from the apparent legislative intent.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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