

1978 WL 34992 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1978

\*1 Mr. Purvis W. Collins  
Director  
South Carolina Retirement System  
Post Office Box 11960  
Columbia, South Carolina 29211

Dear Mr. Collins:

You have requested an opinion whether the portion of the salary of the Superintendent of Schools for Greenville County which he deferred for the purpose of investing it in annuity contracts should be considered part of 'earnable compensation' under § 9-1-10(16). It appears from the Superintendent's employment contract that he was afforded the option of deferring all or part of his salary in excess of a specified amount for such investments.

Section 9-15-10 provides as follows:

The various school districts of this State and State-supported institutions of higher learning are authorized to enter into agreements to pay, at the request of their employees, a part of the incomes of such employees, . . . for the purchase of annuity or other contracts . . .

Section 9-15-20 provides as follows:

The amounts so paid for any such contract shall be considered as payment of salary to such employee for purposes of the Teachers' Retirement System . . .

Both the portion of the salary which was actually taken as salary and the portion which was deferred were initially his to dispose of. As the Supreme Court of South Carolina has held, quoting [Helfering v. Horst](#), 311 U.S. 112, 117-118: The taxpayer has equally enjoyed the fruits of his labor or investment and obtained the satisfaction of his desires whether he collects and uses the income to procure those satisfactions, or whether he disposes of his right to collect it as the means of procuring them . . . The power to dispose of income is the equivalent of ownership of it. [Scott v. S.C. Tax Commission](#), 262 S.C. 144, 147, 202 S.E.2d 854 (1974).

While the present case, of course, does not involve taxation, it does involve the classification of monies as 'income'. Accordingly, it is the opinion of this office that the amount deferred by the superintendent is a part of his income within the meaning of § 9-15-10. Section 9-15-20 makes this amount subject to contributions to the Retirement System. The Retirement System is therefore entitled to both an employer and an employee contribution on the amounts deferred in past years, plus interest. See §§ 9-1-440 and 9-1-290. Such amounts also should be reported as salary in the future.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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