

1978 WL 35097 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1978

*1 Mitchell M. Willoughby, Esquire
Kneece, Kneece & Freeman
1338 Pickens Street
Columbia, South Carolina 29201

Dear Mr. Willoughby:

You have inquired as to whether a member of the General Assembly who ceases such membership and accepts employment with an agency of the State, thereby becoming a member of the South Carolina Retirement System (SCRS), may continue as a member of the Retirement System for members of the General Assembly (RSMGA).

This office previously has issued two opinions on a related question: whether judges of the State participating in the Judges' Retirement System (JRS) may continue to participate in the RSMGA. These opinions are attached hereto as Exhibits A and B. The first opinion [A] dated May 17, 1968 concluded that Item (3) of Section 4 of Act Number 800, 1966 [[Acts and Joint Resolutions of South Carolina 2081 \(1966\)](#)], which is attached hereto as Exhibit C, prohibited judges participating in the JRS from continuing their membership in RSMGA. The second opinion [B] dated May 28, 1975 stated that this prohibition was removed in 1967 by Section 3 of Act Number 188 [[Acts and Joint Resolutions of South Carolina 254 \(1967\)](#)], which has been codified as [§ 9-9-40\(3\) of the South Carolina Code Annotated \(1976\)](#) and which is attached hereto as Exhibit D.

The 1967 Act struck Item (3) of Section 4 of Act Number 800 of 1966 and inserted the following language:

(3) As used in this item 'correlated system' shall mean one or more of the following:

- (a) South Carolina Retirement System;
- (b) South Carolina Police Officers' Retirement System;
- (c) Retirement System for members of the General Assembly of the State of South Carolina.

Notwithstanding any other provision of law, if a member of any correlated system ceases to occupy a position covered under the system and if, within the protective period and under such conditions as are set forth in the correlated system for continuation of membership therein, he accepts a position covered by another correlated system, he shall notify the Director of each system of such employment, and his membership in the first system shall be continued so long as his membership in the other system continues. Service credited to the member under the provisions of the first system shall be considered service credits for the purpose of determining eligibility for benefits, but not the amount thereof, under the other system. Any benefit under any one of the correlated systems shall be computed solely on the basis of service and contributions credited under that system, and shall be payable at such times and subject to such age and service conditions as are set forth therein; provided, however, a member shall not be eligible to receive retirement payments so long as he is employed in a position covered by the South Carolina Retirement System or the South Carolina Police Officers' Retirement System.

Notwithstanding the foregoing, for the purpose of determining qualifications of a member of the system to make an election pursuant to item (2) of this section, service credits under a correlated system shall be deemed to be credited service hereunder. [Emphasis Added] [[§ 9-9-40\(3\) of the Code, supra.](#)]

*2 The May 28, 1975 opinion [B] of this Office noted that the above language clearly demonstrates the intent of the General Assembly to eliminate the prohibition against participation in two retirement systems to which the State contributes. The opinion further states that it is clear that the language was intended to cover those situations wherein a person would be eligible for coverage under the RSMGA and the other two collateral systems. This Office is of the opinion that the conclusion of the May 28, 1975 opinion applies to the question proposed by you.

The emphasized language of the 1967 Act, which has been codified as [§ 9-9-40\(3\)](#), clearly would allow a member of the SCRS to remain a 'member' of the RSMGA after he terminates his membership in the General Assembly. However, the member must comply with subsection (2) of [§ 9-9-40](#), which would allow him to remain either a contributing or noncontributing special member of the RSMGA. Under subsection (2), status as a special contributing member would entitle the member to continue to accrue additional credited service in the RSMGA. The application of subsection (2) in this respect is supported by the fact that subsection (3) of [§ 9-9-40](#) refers to subsection (2), but does not differentiate between a contributing and a noncontributing special member.

Therefore, provided they comply with [§§ 9-9-40\(2\) and \(3\)](#), this Office is of the opinion that persons who serve in the South Carolina General Assembly and then elect to accept employment with a state agency, thereby becoming a state employee and a member of SCRS, may continue to make contributions to the RSMGA and at retirement age collect benefits from the SCRS and RSMGA. However, administrative problems may be created by the Systems' having followed a different procedure over the years. Accordingly, it is recommended that the matter be brought before the Budget and Control Board for the resolution of those administrative problems.

Sincerely yours,

James M. Holly
Staff Attorney

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