

1976 S.C. Op. Atty. Gen. 310 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4451, 1976 WL 23068

Office of the Attorney General

State of South Carolina

Opinion No. 4451

September 16, 1976

*1 Honorable Purvis W. Collins

Director

S. C. Retirement System

Bankers Trust Tower

P. O. Box 11960

Columbia, South Carolina 29211

Dear Mr. Collins:

Thank you for your letter of September 10, 1976.

By Section 61–2 of the South Carolina Code, 1962, the Retirement System is placed under the management of the State Budget and Control Board which, according to Section 61–11, has the responsibility for the proper operation of the System and its general administration. Section 61–19 gives the Board the authority to adopt rules and regulations for the administration of the System and to prevent injustices and inequalities that might arise. Additionally, Section 61–44 provides that the Board shall determine whether any person is a teacher or employer for purposes of the System although these sections do not permit the Board to depart from the statutory provisions for the operation of the System, they do seem to allow the Board a certain amount of discretion in management and administration.

Acting within what it felt to be its discretion, the Board made two rulings in 1949 that are in part the basis of the Retirement System's decision in the case of Gloria Henderson. In applying these rulings to the present case, the System's administration has attempted to follow what it believed to be the policy of the Board and this Office will not attempt to pass upon its decision before the Board has had the opportunity to determine whether Board policy has been correctly applied. In addition, the decision of the Board should not be subject to a judgment by this Office of the merits of this case provided that the decision of the Budget and Control Board is within its discretion and has a rational basis that has been evenly applied.

Authority for exercising this restraint can be found in the case [South Carolina Electric and Gas Co., et al., v. South Carolina Public Service Authority](#), 215 S.C. 193, 54 S.E.2d 777 (1949), which held that where the enabling act contemplated the exercise of discretion by the Public Service Authority, the courts would not interfere with such exercise by ‘. . . a subordinate governmental agency except in cases of fraud or clear abuse of power or where unreasonable or capricious.’ Just as the Court in [South Carolina Electric and Gas Co.](#) would not interfere where the agency was given discretion, this Office will not pass judgment when the Board acts within its authority to administer and manage the System. In the case of [Gloria Henderson](#), the determination of the Board in its review of the Administration's decision should be allowed to stand unless it was outside its discretion, without a rational basis or unevenly applied.

If our Office can be of further assistance to you, please let us know.

Yours very truly,

A. Camden Lewis

Assistant Attorney General

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