



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

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STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 86-37

February 7, 1986

Henry J. Osterloh
State Representative
1314 Starfield
North Little Rock, AR 72116

Dear Representative Osterloh:

This letter is in response to your request for an opinion concerning certain provisions in Ark. Stat. Ann. §§ 12-2524.4 and 72-2524.5 regarding the crediting of military service to the State retirement system.

You provided the following background information forming the basis for your questions.

The State of Arkansas frequently employs college students for part-time and summertime work during periods of time for which they received college education or in-between semesters in the summer. Frequently, and in particularly, male college students belong to R.O.T.C. units or are members of other military reserve organizations. These college students normally, in order to fulfill their military obligation, become active members of an armed force of the United States after their graduation. Some of these military members will return to the State of Arkansas.

You have quoted these sections in your letter as follows:

12-2524.4 Purchase of credited service. Any person who is now or was in the past a member of a state-supported retirement system in this State and who is not receiving benefits under such System on the effective date of this Act shall be entitled to purchase credited service in the System for a period of not to exceed three (3) years, for service rendered by a member in the armed forces of the United States prior to a member's employment in a position covered by a State supported retirement system, provided that: (1) the person has ten (10) years of creditable service

with the Retirement System; and (2) received an honorable discharge from the armed forces; and (3) is not receiving federal military service retirement pay based upon nineteen (19) or more years of active duty, but disability federal retirement pay shall not disqualify a member from purchasing such credit; and (4) he contributes to the member's deposit account a sum of money equal to the amount he would have contributed thereto had he been a member during his term of military service, based upon his monthly contribution at the time he first became a member of the Retirement System and interest thereon at the rate of six percent (6%), together with an amount equal to the employer matching contribution and interest thereon at the rate of six percent (6%). Interest shall commence on January 1, 1976, or six (6) months after eligibility, whichever is later. [Acts 1975, No. 573, §1, p. 1581.]

13-2524.5 Supplemental nature - Maximum years of credited service. The provisions of the Act [§12-2524.4 - 12-2524.6] shall be supplemental to any other laws relating to public supported retirement systems in this State and nothing herein shall be construed to repeal or modify any existing provisions of any State supported retirement system law providing for credited service in the system for military service, nor to diminish the right of any member of a public supported retirement system to obtain credited service in the system for military service under the provisions of such existing laws, but in no event shall any member of a State supported retirement system be entitled to or receive in excess of five (5) years of credited service for military service rendered by the member, and no member shall be eligible for such credited service on more than one State supported retirement system. [Acts 1975, No. 573, §2, p. 1581.]

Your questions then, are as follows:

1. Can a state employee purchase credited service in accordance with §12-2524.4 in the retirement system for a period not to exceed three (3) years for service rendered by that member in the armed forces of the United States prior to the member's full-time employment in a position covered by a state supported retirement system where such same state employee may have, as a college student, had part-time employment or temporary summer employment?

2. If such state employee is eliminated from having the opportunity to purchase retirement under §12-2524.4, does such employee thereby qualify for two (2) years of free credited service in accordance with Ark. Stat. Ann. §12-2524.1?

Ark. Stat. Ann. §12-2524.1 provides as follows:

MILITARY SERVICE CREDIT. Any member of a State-supported retirement system in this State, which system makes no provision for giving members credited service in the System for service rendered by the member in the armed forces of the United States, shall be entitled to receive free credited service in the System for a period of not to exceed two (2) years, for service rendered by him in the armed forces of the United States during World War I, World War II, the Korean Conflict or the Vietnam Conflict. [Acts 1973, No. 634, §1, p. 1736.]

Also relevant to this issue is Ark. Stat. Ann. §12-2510D(b)(1) which provides as follows:

A member's credited service shall include periods of time, not to exceed a total of 5 years, while his employment with a public employer was or is interrupted due to service rendered by him in the armed forces of the United States during a national emergency: Provided, that (1) the said person was or is an employee of a public employer at the time he entered or enters such armed services, and (2) he was or is re-employed by a public employer within six (6) years from and after termination of such armed service required of him, and (3) he returns to the members deposit account the amounts withdrawn by him, together with regular interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period to be so credited any member, the Board shall have final power to determine such period. During the period of such armed service and until his return to the employ of a public employer, a member's contributions to the System shall be suspended. In no case shall such period of armed service be included in computing a member's average compensation.

The above sections offer credit for military service in varying circumstances. Ark. Stat. Ann. §12-2524.4 applies

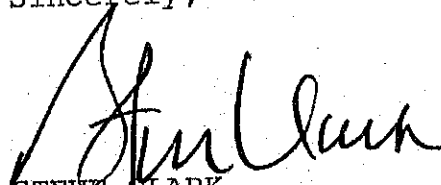
when military service occurred before employment in a position covered by a retirement system; §12-2510D(b)(1) applies when state employment covered by a retirement system is interrupted by military service; §12-2524.1 applies if the system makes no provision for credit for military service.

The State Employees Retirement System Act does not directly address coverage in terms of part-time or summertime employees. All employees, as defined in §12-2501(E), employed on July 1, 1957 or who became employed after June 30, 1957, are required to join the system. Ark. Stat. Ann. §12-2506A(a) (Repl. 1979). "Employees" means generally all state employees who are paid with appropriate funds and other specified classes of employees. Several exemptions from the definitions are enumerated. The only apparent exemption for summertime and/or part-time employees is §12-2501E(a)(iii)(7) which exempts persons employed with the intent of working less than 90 calendar days.

Therefore, a student employed by the State prior to entering military service, who held a part-time or summertime job, exempt from coverage under §12-2501E(a)(iii) or some other provision, appears to be eligible for military service credit under §12-2524.4. That section would be applicable because his employment prior to military service was not in a position covered by the system. If the employment prior to military service was covered by the system, §12-2510D(b)(1) would apply.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Thomas S. Gay.

Sincerely,


STEVE CLARK
Attorney General

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