

91-00181
OFFICE OF THE ATTORNEY GENERAL



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The Honorable Steve Windom
State Senator, 35th District
P. O. Drawer 2025
Mobile, Alabama 36652

Docks Department - Employees' Retirement
System - Employees, Employers,
Employment - Creditable Service

Act No. 90-579 Is Not In Conflict With
Federal Law

Dear Senator Windom:

This advisory opinion is issued in response to your request dated
January 18, 1991.

QUESTION

Your request is as follows:

"Please accept this letter as my request for an Attorney General's opinion with regard to Act No. 90-579. That Act prohibits a state employee from receiving railroad retirement benefits and state retirement from the Alabama Retirement System. In essence, it provides that a person buying back retirement time under this statute would have to waive the benefits of the railroad retirement program. As I understand it, the law was passed specifically for one individual; however, it has a wider application. This would appear to be in conflict with federal law which established the railroad retirement system. I would appreciate your review of the statute and railroad retirement enactment and your opinion as to the constitutionality of Act No. 90-579."

FACTS AND ANALYSIS

Interpretation and application of federal law is, of course, within the province of federal authorities. However, I would be happy to share with you my opinion on the conflict question which you have raised insofar as it relates to the interaction of federal law and state law.

Under the general state law governing the Employees' Retirement System, particularly §36-27-1(2) and §36-27-30, Code of Alabama 1975, a person who participates in another publicly funded retirement plan cannot participate in the Employees' Retirement System. Certain employees of the Alabama State Docks who are paid through the Terminal Railway payroll have historically been covered under the Federal Railroad Retirement Plan and, therefore, have been ineligible for participation in the Employees' Retirement System.

Act No. 90-579 allows certain persons who were previously precluded from participating in the Employees' Retirement System because of their employment by the Terminal Railway and their participation in the Federal Railroad Retirement Plan an opportunity to claim credit in the Employees' Retirement System. Consistent with the prohibition against a person participating in two publicly funded retirement systems, Act No. 90-579 provides that, in order to receive credit in the Employees' Retirement System, a person eligible for benefits under the Federal Railroad Retirement Plan must waive benefits under that plan. The Act specifically says that, "Under no circumstances shall a person receive benefits from more than one pension plan for the same employment service."

No person is required to waive Federal Railroad Pension benefits because no person is required to claim credit in the Employees' Retirement System under this Act. The Act simply offers an alternative for certain persons which they may choose or decline as they wish. Without the waiver provision, the Act would have been in conflict with basic principles underlying, and embodied in, the state retirement law.

The Railroad Retirement Act of 1974, in 45 U.S.C §231j, specifically provides that a person may waive benefits under the plan provided in that Act.

CONCLUSION

Act No. 90-579 is not in conflict with federal law governing railroad retirement because such Act does not require anyone to waive railroad retirement benefits and because the law governing federal railroad retirement benefits specifically allows persons to waive benefits under that law.

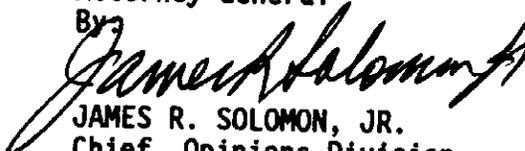
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With respect to your question regarding the constitutionality of Act No. 90-579, it is the Attorney General's policy not to give advisory opinions on the constitutionality of state statutes since that is a matter reserved to the courts.

Sincerely yours,

JIMMY EVANS
Attorney General

By



JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE:WTS:mbd