

OFFICIAL OPINION NO. 85-06, Retirement annuities

February 5, 1985

Honorable Walter C. Conahan
State Senator
101 Washington Road
Volga, South Dakota 57071

OFFICIAL OPINION NO. 85-06

Retirement annuities

Dear Senator Conahan:

You have requested an official opinion based upon the following factual situation:

FACTS:

SDCL 3-10-5 allows the state to withhold a designated amount of salary for an employee to purchase a retirement annuity from 'a company or organization licensed to do business in the state . . .' Some agencies of state government have taken this passage to apply only to insurance companies.

Based on the above facts, you have asked the following question:

QUESTION:

Can an employee purchase a retirement annuity through the provisions of SDCL 3-10-5, from companies or organizations other than insurance companies, such as investment brokers, banks etc., who are legally able to sell retirement annuities?

SDCL 3-10-5 provides:

When so authorized by an employee, it shall be the duty of the employer to withhold the amount designated from the salary of the employee and to purchase a retirement annuity from a company or organization licensed to do business in the state of South Dakota, for such employee and to make the periodic payments on such retirement annuity according to the terms of the _annuity contract.

Based on the foregoing statute, it is my opinion that the answer to your question is yes. A bank or investment broker may sell retirement annuities to state employees pursuant to SDCL 3-10-5 so long as the bank or investment broker is licensed to do business in this state.

Since retirement annuities are securities, you are reminded that the requirements of SDCL Chapter 47-31 must be met.

Respectfully submitted,

Mark V. Meierhenry
Attorney General