

MARCH 24, 1949.

DR. WILLIAM S. CARPENTER, *President*,
Att: DR. CHARLES P. MESSICK, *Secretary*,
Civil Service Commission,
State House, Trenton, N. J.

FORMAL OPINION—1949. No. 13.

DEAR SIR:

Your letter of March 16, 1949, requesting an opinion has been received.

The facts as related to this office indicate that on December 7, 1948, 18 patrolmen of the City of Hoboken were voted and paid bonuses for the calendar year 1944, pursuant to P. L. 1941, Chapter 404, as amended by P. L. 1943, Chapter 31. The City of Hoboken justifies its position by recognizing said bonuses as a lawful debt of the municipality, incurred in the year 1944 when the then City Commission deprived the 18 patrolmen in question of city Christmas bonuses, which were paid to all other city employees who had waived their right to commence legal proceedings against the city for overtime pay, and further by requiring these 18 patrolmen to render 1,400 extra hours punishment detail.

You propound the following questions:

1. Whether or not the Board of Commissioners of the City of Hoboken could, under the statutes, direct on December 7, 1948, the payment of a bonus to selected members or any members of the uniformed police department of the City of Hoboken for the fiscal year 1944, and make payment thereof.

The answer is yes.

The 1941 statute as originally passed allowed municipalities, etc., to discriminate in respect to bonus payments. At the time that the City of Hoboken granted its 1944 bonus, its action was a proper one. On April 29, 1946, P. L. 1946, Chapter 193, a supplement to Chapter 404, P. L. 1941, became effective. This latter statute provides that when and if bonuses are granted under the 1941 act, as amended by the '43 statute, that

"where such bonus payments have been heretofore or shall hereafter be granted and paid in any department under the jurisdiction of the * * * governing body * * * by whatsoever name, of any * * * municipality * * * such bonus shall apply and be paid generally to all persons holding office, position or employment in such department without discrimination among such persons."

In an endeavor to give effect to the 1946 act, and recognizing the discriminatory practice in 1944, the municipality properly elected to vote a 1944 bonus to those persons who had previously been excluded. You will please note the use of the words "heretofore or shall hereafter" which contemplated uniform payment to all employees within the several departments, irrespective of the year in which the discrimination might be found.

2. Whether or not payrolls, bills or warrants for such payment should have been submitted to the Civil Service Commission or its duly authorized representative for certification before such payments were made.

The answer is yes.

Undoubtedly the payroll and warrants for payment should have been submitted to the Civil Service Commission pursuant to the 1946 supplement. But the question then arises, what duty now devolves upon the Civil Service Commission to rectify this error of procedure. The funds allocated to the payment of these bonuses have been appropriated and payments have been made to the individuals concerned. I do not see how the Civil Service Commission can now assume any jurisdiction, the statute being silent as to any penalty or action which the Commission may now institute.

3. Whether or not an appeal properly lies before this Commission as per complaint of certain members of the department against the granting of the bonuses under the action of the Board of City Commissioners on December 7, 1948, to certain selected members of the department.

The answer is no, for the reasons set forth in the answers to one and two above.

4. What action, if any, the Civil Service Commission should take under the statutes in consideration of all the facts and circumstances disclosed by the file herewith submitted.

It is our view that the Civil Service Commission should take no action in this matter and should inform the persons allegedly aggrieved that their individual problems should be presented to private counsel.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOHN W. GRIGGS,
Deputy Attorney General.

MARCH 24, 1949.

HON. HOMER C. ZINK,
Att: MR. AARON NEELD,
Division of Taxation,
State House.

FORMAL OPINION—1949. No. 14.

DEAR SIR:

Your letter of March 2, 1949, requesting an opinion has been received.

As we understand the problem, the Outdoor Advertising Tax Bureau has received two applications for permit to erect and maintain advertising structures, one on either side of an overhead bridge or trestle owned by the Jersey Central Railroad Company and spanning a street in Newark. These applications were accompanied by a city permit issued by the Department of Public Safety, Division of Buildings, City of Newark, New Jersey, and signed by the Superintendent of Buildings.