

JUNE 15, 1949.

HON. LLOYD B. MARSH,  
*Secretary of State,*  
Trenton, N. J.

## FORMAL OPINION—1949. No. 62.

DEAR SIR:

Your letter of June 10th relative to the effect of P. L. 1949, Chapter 22, received. The question, restated as we understand it after conferring with you, is as follows:

By virtue of P. L. 1949, Chapter 22, must the oath of allegiance and office (prescribed in R. S. 41:1-3, as amended by said act, and required of persons elected or appointed to certain public offices, positions or employments) be taken and subscribed by every person who, before the effective date of said act, had already assumed the office, position or employment to which he was elected or appointed?

The answer is no.

Section 41:1-3 of the Revised Statutes, as amended by P. L. 1949, Chapter 22, reads as follows:

In addition to any official oath that may be specifically prescribed, the Governor for the time being and *every person* who shall be elected, appointed or employed to, or in, any public office, position or employment, legislative, executive or judicial, or to any office of the militia, of, or in, this State or of, or in, any department, board, commission, agency or instrumentality of this State, or of, or in, any county, municipality or special district other than a municipality therein, or of, or in, any department, board, commission, agency or instrumentality thereof, and every counsellor and attorney-at-law, *shall, before he enters upon the execution of his said office, position, employment or duty take and subscribe the oath of allegiance and office . . .* (Italics ours.)

A careful reading of this section will reveal that it applies prospectively on and after April 12, 1949 (the effective date of Chapter 22), by prescribing that "every person . . . shall, before he enters upon the execution of his said office, position, employment or duty take and subscribe the oath of allegiance and office . . ." Moreover, the title of the act supports this construction. The title reads:

An act concerning the oath of allegiance and office and providing for the taking of the same as a *prerequisite to the assumption of public office, position or employment . . .* (Italics ours.)

Obviously, persons in public office, position or employment who had entered upon their duties before April 12, 1949, are not within the purview of the section as amended.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: DOMINIC A. CAVICCHIA,  
*Deputy Attorney General.*