

NOVEMBER 10, 1949.

MR. GEORGE M. BORDEN, *Secretary,*  
*State Employees' Retirement System,*  
1 West State Street,  
Trenton 7, New Jersey.

## FORMAL OPINION—1949. No. 101.

MY DEAR MR. BORDEN:

I have your letter of the 27th ult. with enclosure of copy of opinion rendered by this department on May 1, 1947 to the effect that under R. S. 43:16A—3 (Police and Firemen's Retirement System), payments by the municipality and the members should commence from the date of permanent appointment and that if such action is delayed by the municipality, the accrued payments are due from the municipality and the members.

This opinion undoubtedly correctly states the law with respect to the matter then under consideration because that statute provided that "any person becoming a policeman or a fireman . . . shall become a member of this retirement system as a condition of his employment".

You present two inquiries for my consideration—(1) whether your retirement law requires enrollment of an employee within the six months or one year period provided in Paragraphs "a" and "b" of Section 43:14-2 of your Retirement System; and (2) whether your law requires an employee to pay back to within the six months or one year period mentioned above if the employer has not required the employee to comply with the statute.

The answer to your first inquiry is that employees who are in the classified civil service should be enrolled within the time prescribed in "a" and "b" of Section 43:14-2 of your retirement system law for these periods of time are beyond the working test period or probationary period prescribed by law for those who enter the classified service of the civil service law.

R. S. 43:14-2 states who may be members of your fund and by 43:14-5 the head of a department employing a member is required to submit to your board a statement showing the name, title, compensation, duties, date of birth and length of service of the member and any other information the board may require as to such member, and by 43:14-6 your board is required to classify such person in one of the four classes mentioned in that section and to certify to the member the group in which he has been placed and the date of his admission to membership.

By R. S. 43:14-16 your board is required to certify to the head of each department the amount which is to be deducted from the compensation of such member on every pay roll. It will be observed from the two sections last above referred to, the head of a department employing a member and your commission have a duty to perform. The first shows that your board must not only know the name but the compensation to be paid to the person employed in order that your board may ascertain and certify the amount to be deducted from the compensation of such employee. No duty is imposed upon your board of trustees under your retirement system act to see to it that persons employed in the classified civil service shall enroll in your retirement system within the time prescribed by your law, and that the duty of furnishing the required information in order that enrollment may be had is cast upon the head of the department in which the employee is employed. Of course, as

you know, where an employee of the State does enroll in your retirement system and has served the State previously to such enrollment, he may be given credit for such prior service upon making back payments; and by Section 43:14-2.9, one who has been temporarily employed by the State and whose temporary employment resulted in permanent employment is permitted to make contributions covering his temporary service so that he will get the benefit of the period of time covered by such temporary employment.

It is true that under R. S. 43:14-19 employees entering the classified service of the State on and after January 1, 1922, are subject to the provisions of your Retirement Act and that there is cast upon the employer the duty of informing the employee of his duties and obligations under your act as a condition of his employment. This section, however, imposes no duty upon your trustees and in nowise modifies the view which I entertain and which I have expressed herein.

One can imagine that where enrollment was deferred for a year or two by reason of the fact that information was not furnished to your commission of the employment of a person in the classified service, that deductions, if made from one payment alone, or possibly two or three payments, might exhaust the entire income of the person for a given month and thus leave such person without any visible means of support.

I suggest that you promptly contact the Civil Service Commission and request from that Commission that when future appointments are made from a civil service list that your commission may be notified so that you may immediately communicate with the head of the department and obtain the necessary information to enroll such member after the expiration of the working test or the period of time mentioned in R. S. 43:14-2.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: THEODORE BACKES,  
*Deputy Attorney General,*

TB:B

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NOVEMBER 14, 1949.

DR. JOHN H. BOSSHART,  
*Commissioner of Education,*  
175 West State Street,  
Trenton, New Jersey

FORMAL OPINION—1949. No. 102.

DEAR DR. BOSSHART:

You have requested our opinion as to whether, under the Fair Labor Standards Act of 1938 as amended by the Fair Labor Standards Amendments of 1949, the State of New Jersey is legally bound, in awarding "work scholarships" to students at State Teachers Colleges, to allow credit for work performed at a rate of not less than 75c per hour. It is understood that a work scholarship consists of giving credit