

DECEMBER 6, 1949.

HONORABLE WILLARD G. WOELPER,  
*Administrative Director,*  
*Administrative Office of the Courts,*  
Trenton, New Jersey.

## FORMAL OPINION—1949. No. 109.

DEAR DIRECTOR:

Receipt is acknowledged of your letter of November 23rd, in which you call our attention to the formal verified petition of Mr. Louis F. Beachner, an official stenographic reporter, "requesting retirement upon a pension pursuant to Chapter 402 of the Laws of 1948"; state that "since September 15, 1948, Mr. Beachner has been paid a proportionate share of his salary from each of the counties in the chancery vicinage where he was serving"; and ask to be advised "whether under the existing statutes any pension awarded to Mr. Beachner would be payable by these counties and, if so, in what proportion."

It is our opinion, and we advise you, that any pension awarded to Mr. Beachner will be payable by the four counties last paying his salary and in the same proportion paid by each thereof, but that one-third of the amount so directly payable by each county will be reimbursable by the State Treasurer upon the warrant of the State Comptroller.

The reasoning by which we have arrived at this conclusion is hereinafter set forth.

The petition is filed under R. S. 43:6-9 to 43:6-13, sections 43:6-10 and 43:6-11 whereof were amended by P. L. 1948, c. 402. The judicial officers and courts named in these sections were those in being under the Constitution of 1844, and the stenographic reporters referred to in said sections were those authorized by law before enactment of P. L. 1948, c. 376, which, by way of implementing the Constitution of 1947, provided a new scheme for the appointment, and availability for service, of official stenographic reporters. However, by section 3 of said act, it was provided that the reporters to be first appointed thereunder "shall be the reporters serving as official reporters of the old Supreme Court . . . and as the official reporters of the Court of Chancery, and as the official reporters of the courts of common pleas."

You indicate in your letter that Mr. Beachner was employed "from May 1, 1928, up until September 14, 1948 . . . as an Official Stenographic Reporter, serving in the Court of Chancery . . . On September 15, 1948 . . . he was appointed an Official Stenographic Reporter . . . and was assigned to the Chancery Division." If Mr. Beachner is still in service, he has served (if the dates set forth in his petition are correct) continuously for twenty years. But under section 43:6-10, in order to qualify for retirement on pension a stenographic reporter must have served *continuously in the Court of Chancery or any one circuit (on the law side) for at least twenty years*. In view of the reorganization of our court structure under the Constitution of 1947, and the provisions of P. L. 1948, c. 376, by which there was created an integrated system for the service of stenographic reporters, the first question to be determined is whether the continuous service in the one court or in any one circuit of the other court, required by section 43:6-10, is possible of attainment at all or is possible of attainment only by continued service in that division of our Superior Court

which can be said to be the counterpart of the Court of Chancery or the particular circuit on the old law side.

The whole tenor of the Schedule of the Constitution of 1947 evidences an intent that the new instrument itself was not to operate unfavorably upon persons holding public office, position or employment. And by Article XI, Section I, Paragraph 3, of the same instrument, it was decreed that

All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force at the time this Constitution or any Article thereof takes effect shall remain in full force until they expire or are superseded, altered or repealed by this Constitution or otherwise.

We have been unable to find any constitutional provision which could be construed as superseding or repealing R. S. 43:6-9 et seq. And if our new organic law can be said to have altered these sections of the Revised Statutes at all, it is only to the extent that Article XI, Section IV, Paragraph 10, transferred to the Chief Justice of the new Supreme Court, until otherwise provided by law, such statutory powers *not related to the administration of justice* as were vested in certain judicial officers at the time the new Judicial Article took effect. (This paragraph of the Schedule of the Constitution, however, we reserve for discussion later herein.) Nor have we been able to find any provision of law since enacted which could be construed as superseding or repealing these sections of the Revised Statutes. On the contrary, the very enactment of chapter 402 by the 1948 Legislature evidences an intent to retain (and with reduced age requirement effected by said chapter by way of amendment) R. S. 43:6-9 et seq. (Later herein we shall discuss the relation of P. L. 1948, c. 375 to these sections of the Revised Statutes.)

The enactment by the same Legislature (1948) of chapter 376, providing for an integrated system for the service of official stenographic reporters in the new court structure (under which assignment and re-assignment may be made without regard to law or chancery), conduces to the conclusion that there is no more justification for saying that continuous service in the Court of Chancery and in the Chancery Division of the Superior Court, or that continuous service in any one of the old circuits at law and in the Law Division of the Superior Court, meets the literal requirement of continuous service in the Court of Chancery or in any one circuit, as the case may be, than there is for saying that the requirement is not met in the case where the service began in the Court of Chancery, or in any circuit at law, and continued there until interrupted by the taking effect of the new Judicial Article and the consequent assignment, under chapter 376, to a place in no way analogous to the place of former service.

Of statutes granting pensions to persons in public service, it is stated in *Sutherland Statutory Construction*, 3rd Ed., Vol. 3, section 7209, as follows:

. . . Although this type of legislation constitutes a form of public grant, nevertheless it has as its purpose the promotion of the public welfare, and for that reason pension statutes are liberally construed to accomplish their objectives. Thus in determining the beneficiaries entitled to pensions, the qualification of the pensioner, and the time of service required for obtaining a pension, the courts should not resort to technicalities. . . .

We think that by force of the organic revision of our court structure and P. L. 1948, c. 376 (an implementing statute) as of September 15, 1948, and thereafter the criterion in R. S. 43:6-9 et seq. (so far as concerns continuous service) has been the

fact of continuous service for at least twenty years, regardless of *place* of service. Statutes are to be considered *in pari materia* when they relate to the same person or thing, or to the same class of persons or things, or to have the same object. *Sutherland, supra*, section 5202. Thus, to the extent that P. L. 1948, c. 376, relates to those persons now serving as official stenographic reporters and who served as stenographic reporters in the old court structure and before September 15, 1948, were covered by R. S. 43:6-9 et seq., the said act and the said sections of the Revised Statutes are to be read together; and, from the standpoint of continuous service for at least twenty years, if the dates alleged are accurate, Mr. Beachner qualifies for retirement on pension.

Now as to the funds out of which, and the manner in which, the pension is payable. Section 43:6-12 provides:

. . . The pension shall be paid out of the same funds and in the same manner as the salary or compensation of the stenographic reporter was paid to him while acting as stenographic reporter.

The obvious intent of this provision, according to context, is that the unit or units of government paying the salary or compensation of the applicant at the time of retirement shall bear the cost of his pension to the same extent that it or they bore the cost of his services.

In your letter you indicate that Mr. Beachner has been paid his salary, since September 15, 1948, by four counties: "Hudson County 44%; Bergen County 27%; Passaic County 21%; Morris County 8%." We take it that this apportionment was made under section 9 (c) of P. L. 1948, c. 376, which provides:

Where a reporter is employed in more than one county, or in a part or parts of the Chancery Division of the Superior Court having a vicinage embracing more than one county, the Director shall apportion to each of said counties the payment of such part of the reporter's annual salary as the population of such county bears to the population of all of said counties according to the latest Federal census. The Director shall file a certificate with the treasurer of each of said counties designating the reporter and the amount of his annual salary apportioned to the particular county, and shall also file a duplicate thereof with the State Comptroller. The county treasurer shall pay the part of such annual salary so apportioned to his particular county as hereinabove provided.

However, section 9 (g) of the same act (so far as pertinent) provides as follows:

One-third of the amount paid directly to reporters by each county as herein provided, whether as salary, fees in lieu of salary or traveling and other necessary expenses incident to his attendance upon court, shall be refunded to said county by the State Treasurer upon the warrant of the State Comptroller . . .

In other words, direct payment of Mr. Beachner's salary was, by apportionment under section 9 (c), made by four counties in the respective proportions certified by the Administrative Director, but by virtue of section 9 (g) each county was reimbursable by the State to the extent of one-third of the amount so paid him.

In order, therefore, to give full force and effect to the intent of R. S. 43:6-12 that the pension "shall be paid out of the same funds and in the same manner as the salary or compensation" was paid to Mr. Beachner while acting as stenographic reporter, the full amount of the pension is to be apportioned among the counties last

paying his salary, in the same manner as his salary was apportioned, and the respective counties are in turn to be reimbursed one-third by the State Treasurer in the manner provided by section 9 (g) of P. L. 1948, c. 376

In considering this matter, the present posture of the law has raised in our minds the question whether the Chief Justice has authority to determine Mr. Beachner's application. Our conclusion is that the Chief Justice has, and until law is enacted to provide otherwise, will continue to have, the powers of Chancellor, Vice-Chancellor and Justice of the former Supreme Court in connection with R. S. 43:6-9 et seq.

By section 43:6-11, as amended by P. L. 1948, c. 402, the "Chancellor, Vice-Chancellor or Justice of the Supreme Court, under whom or in whose circuit the stenographic reporter is serving at the time of his application to be retired upon a pension, shall satisfy himself of the age and physical incapacity . . . and fix the amount of the pension" and if satisfied that the applicant "is sixty-one years of age, or more, and is physically incapacitated from further service as a stenographic reporter, he may, if under all the circumstances he determines that the retirement upon . . . a pension is just and proper," make the requisite certificates to that effect. As already indicated, the scheme of service of stenographic reporters evident in R. S. 43:6-9 et seq was consonant with the court system superseded by that ordained by the Constitution of 1947, to implement which, so far as official stenographic reporters are concerned, P. L. 1948, c. 376, was enacted.

Under this enactment (aside from stenographic reporters thereunder appointable by county judges and not of consequence in this opinion) the appointment of stenographic reporters is made by the Supreme Court, their salary is fixed by the Supreme Court, and their removal for cause may be by the Supreme Court alone. As we read this statute, these reporters essentially serve under the Supreme Court, and administratively (assignment for service, change of assignment, etc.) they are controlled by the Chief Justice through the Administrative Director.

Hereinabove we have mentioned, but not discussed, Article XI, Section IV, Paragraph 10, of the Constitution of 1947. It reads:

Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute, rules or otherwise upon the Chancellor, the Ordinary, and the Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with this Constitution, shall be transferred to and may be exercised by Judges of the Superior Court until otherwise provided by law or rules of the new supreme Court; *excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of this Constitution takes effect and until otherwise provided by law, be transferred to and exercised by the Chief Justice of the new Supreme Court.* (Italic supplied.)

The rule of construction regarding the ordinary meaning of words is well established. As was said in the case of *In re An Act Concerning Alcoholic Beverages*, 130 N. J. L. 123, at page 128:

In the classic words of Chief Justice Marshall, the framers of the constitution and the people adopting it "must be understood to have employed words in their natural sense, and to have intended what they said."

Webster's 'Twentieth Century Dictionary assigns to the word "administration" the meaning (among others) of

Dispensation; distribution; exhibition; as the *administration* of justice . . .  
(Italics in the text.)

Thus the phrase "powers not related to the administration of justice," as used in the paragraph of the Constitution above recited, obviously was intended to comprehend those powers which by their very nature are not essentially judicial. And since the powers vested in the judicial officers named in R. S. 43:6-9 et seq. are patently not essentially judicial, they were among those transferred, until otherwise provided by law, to the Chief Justice of the new Supreme Court in the said paragraph of the Constitution. The framers manifestly intended, and it cannot be reasonably disputed that the people so understood it, to constitute the Chief Justice as the temporary repository of those extra-judicial powers which by statute had been conferred on certain judicial officers and which by their very nature are at the Legislature's disposal and, consequently, subject to its enactment. But in this manner of treatment, there was nonetheless a constitutional investiture of these powers in the Chief Justice, even if provisionally. And there they remain until otherwise provided by law.

Our search for law in which it might be otherwise provided has turned up P. L. 1948, c. 375, "An Act to provide for the effect to be given, on and after September fifteenth, one thousand nine hundred and forty-eight, to certain statutes which became effective prior to, and remain in effect upon, said date." By this omnibus law, effective on the date the new Judicial Article was to take effect, the Legislature sought to integrate into the revised judicial system, so far as possible, the then existing statutes dealing with the power, jurisdiction, duty, limitation, or provision, governing or relating to any former court or officer specifically named, etc. But our examination of this act convinces us that there is no provision thereof which could be rationally construed to divest the Chief Justice of his provisional constitutional powers in relation to R. S. 43:6-9 et seq.

Bearing in mind that under P. L. 1948, c. 376, enacted by the same Legislature that enacted chapter 375, the scheme for service of stenographic reporters is different from that in vogue for stenographic reporters appointed by the Chancellor, a Vice Chancellor or a Justice of the former Supreme Court in circuit, and the construction which (in the light of the present posture of applicable law resulting from the constitutional reorganization of our court structure) we have placed upon the phrase "continuously in the Court of Chancery or any one circuit for at least twenty years," we find it impossible to correlate the respective provisions of chapter 375 with the respective references in R. S. 43:6-10 and 43:6-11 to "Chancellor, Vice-Chancellor or Justice of the Supreme Court under whom or in whose circuit" the stenographic reporter "is serving at the time of his application" to be retired on pension. We therefore conclude that the Chief Justice has authority to determine Mr. Beachner's application.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General.*

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